

























# **Institutional History of Virginia**

**In the Seventeenth Century**

**An Inquiry into the Religious, Moral, Educational, Legal, Military, and Political  
Condition of the People**

**Based on Original and Contemporaneous Records**

By

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**Part IV**  
**The Military System**





## CHAPTER I

### General Regulations: Persons Liable for Service

THE Military System of Virginia in the Seventeenth century was based entirely on a militia. The Colony never sought to establish a regular army for constant service, unless the companies of rangers guarding the frontiers could be looked upon in that light. For a short time only were the red coats of English troops seen at Jamestown; and with the exception of the conflicts among the Virginians themselves occurring during the Insurrection of 1676, or of English seamen with pirates, as in Lynnhaven Bay in 1700, no event approaching the character of a battle took place on the Colony's soil or in its waters, between white persons during the course of this long period. Nevertheless, its military system was fairly well organized as a protection against Indian invasion by land, and foreign invasion by both land and sea. There was never, as it turned out, a well founded reason for apprehension on the score of a European foe except during the progress of the wars with the Dutch, but the danger of Indian incursions was almost always present; and at times that danger developed into an actual attack, which carried destruction far and wide among the frontier settlements, and even to the very heart of the Colony. The recollection of the appalling massacres of 1622 and 1644 was enough in itself to cause the people

to maintain a more or less efficient military system so long as any savages roamed along the borders, as they continued to do down to the last day of the century.

Before entering into a detailed account of the special means used to ward off an Indian or foreign invasion, it will be appropriate to inquire into the general regulations governing the Colony's military system. One of the earliest as well as one of the most important of these, adopted about eight years after the memorable Orders of 1618, put an end forever to the martial laws previously controlling the community; in the instructions given to Yeardley in 1626, it was expressly enjoined that, with the exception of men newly arrived, who were to be called upon to defend only the place where they had settled should it be assailed, every male individual above seventeen years of age and under sixty was to be liable to be summoned to war, and to perform military duties in proportion to his abilities. It shows the strict attention paid to personal distinctions in these times that, unless the necessity was an urgent one, no officer could be compelled to go forth on a hostile expedition in the character of a private soldier.<sup>1</sup> The like instructions as to general military service were given to Berkeley when, in 1641-2, he received his first commission as Governor of Virginia; they contained but one, and that an unimportant, modification as compared with the instructions given to Yeardley about fifteen years before, namely, the military age was to begin at sixteen.<sup>2</sup> Should any person, subject, under these general regulations, to military duty, refuse or

<sup>1</sup> Instructions to Yeardley, 1626, Robinson Transcripts, p. 45.

<sup>2</sup> Colonial Entry Book, 1606-62, p. 226. This remained the law until the end of the century; see Beverley's *History of Virginia*, p. 218.



neglect to respond to the summons, he exposed himself to severe punishment. When, in 1627, Richard Bickley declined to take up arms after being ordered to do so by Ensign John Utie, he was promptly arrested; and having been carried before the General Court and tried, was sentenced to be laid neck and heels for the space of twelve hours; and also to pay a fine of one hundred pounds of tobacco, at this time in itself a heavy penalty owing to the high price of the commodity.<sup>1</sup>

An Act of Assembly passed in 1639 declared that every person of the male sex of the legal age, unless a negro slave, should be compelled to furnish his military services whenever the occasion for it arose; and only one year later, it was provided that every master of a family should be held responsible for the performance of military duties by each of its members physically capable of bearing arms.<sup>2</sup> The word "family" appearing in the body of this law was intended to embrace every dependant of the master except the negro slave, who was again excepted from the scope of the statute. In not excluding the white servant, the General Assembly perhaps bore in mind the fact that, in time, such a person would become a freeman and his usefulness as a citizen would be increased and not diminished by the military training which he might receive while still bound by articles of indenture. The negro slave, on the other hand, could not look forward to a day of emancipation; and instruction in the use of the gun, sword, and pike would only encourage him to turn that knowledge against his master in order to secure his own liberation by force.<sup>3</sup>

<sup>1</sup> Orders May 7, 1627, Robinson Transcripts, p. 65.

<sup>2</sup> Robinson Transcripts, p. 215; Randolph MS., vol. iii., p. 231.

<sup>3</sup> Acts of Assembly 1639, Randolph MS., vol. iii., p. 231.

The exclusion of the slaves grew more rigid with the passage of time, for as their number expanded, the danger of accustoming them to arms only increased. A like apprehension gradually sprang up in connection with the white servants as this part of the population came to form a larger proportion of the whole community. By 1672, only those white servants were admitted to the ranks of the militia whose terms had nearly expired<sup>1</sup>; and these simply because it was felt that, as they would so soon become freemen, they would have no inducement to turn their weapons against their masters; and also because it would be well for them, in anticipation of their approaching citizenship, to enjoy a military training. When, in 1699, Governor Nicholson proposed that the whole body of agricultural servants should be taught to bear arms, the House of Burgesses returned a reply which fully explains the change of sentiment that had taken place on this point since the middle of the century: they opposed such a policy on two grounds: first, it would be burdensome to the large and small planters alike, but above all to the small, necessarily the poorest, to have their servants,—their main dependance for a livelihood,—subject to every summons of the militia officers, especially if issued at those seasons when the tobacco crop required the greatest attention to protect it from the worms and weeds in the field, or to cure it properly in the barns; and secondly, the arming of the white servants would be dangerous to the community's safety, as they included among their number many of the "worst people of Europe." In justification of this expression, the Burgesses declared that very many

<sup>1</sup>British Colonial Papers, vol. xxx., No. 51.



Irish servants, "soldiers in the late wars," had been recently transported to Virginia to work in the plantations. The incorrigible rudeness and ferocity of these men made the strongest impression on all classes in the Colony; and as soon as they were added to the sullen and unruly element to be found at every period among the servants, it was justly thought to be only common prudence to keep all weapons of attack out of their hands. The Burgesses closed with the statement that it was difficult to control their white laborers when unarmed; and that, if they were armed and permitted to attend musters, they might be tempted to seek to obtain their freedom by slaying their masters. In a war with a foreign foe, the Irish especially were much more likely to desert to the enemy than to assist the colonists.<sup>1</sup>

Whilst the second reason given by the Burgesses for opposing Nicholson's proposition was more true of one period than of another, nevertheless it must have carried a certain force throughout the century. The larger number of the servants, being men who had voluntarily bound themselves by indentures to work for their masters, during a definite number of years, could have had no real inducement to raise their hands against the landowners, or to join a foreign enemy; but this could not be said of those persons who had been imported into the Colony as common or political convicts; the fiercest and most irreconcilable of these, having nothing of good fortune to look forward to, not unnaturally were disposed to make use of any means or opportunity which would release them from their galling bondage. There was perhaps only one crisis

<sup>1</sup> Minutes of Council, June 2, 1699, B. T. Va., vol. lii.

in which, so far as a foreign foe was concerned, all ranks among the servants might have been safely enlisted in the militia: this was during the progress of an Indian incursion.<sup>1</sup> [The savages were not inclined to discriminate between the different classes of white men, but were implacably hostile to master and servant alike, whether the latter was loyal or disloyal. The dangerous convict understood this fact as clearly as the servant whose term was drawing to a close, and he, therefore, knew that he could not fly to those wild children of the forest with any hope that it would assure him a more tolerable situation in life.] The tomahawk or the torch would have been his portion even though, as a transported Irishman, he regarded the English with a hatred more unquenchable than ever burned in the breast of a Monacan or a Huron.

There were among the freemen of the proper legal age only one set of persons claiming exemption from military service; these were the Quakers, who based their demand, as we have seen, on their religious tenets alone. The authorities, however, declined to yield to it, and the sect's persistence in the teeth of this fact was one of the principal reasons for the persecution to which they were long subjected; for it was felt by other sections of the community that the Quakers were seeking to shirk one of the most essential duties of citizenship, and that, so far as they were able to evade it, the safety of all was to that extent jeopardized. After the passage of the Toleration Act, they were relieved of military service on payment of a fine; but it was not

<sup>1</sup> An Act of Assembly passed in 1644-5 expressly allowed servants to be enlisted in every march against the Indians; see Hening's *Statutes*, vol. i., p. 292. A terrible massacre by the Indians had only very recently occurred.



long before they were raising a protest even against this. John Pleasants, the most prominent and influential member of the sect in Virginia, and a number of other persons of the same faith, united, in 1696, in petitioning the House of Burgesses to revoke the fines which they had been condemned to pay for failing to attend musters and to bear arms as the Act required; and they complained bitterly of the hardships this law imposed on them.<sup>1</sup>

The method of ascertaining the number of persons residing in the Colony who were liable to perform military service was substantially the same throughout the century. As early as 1644, the lieutenant of each county was required by law to return to the Governor and Council, on the first of every June, a full list of all such persons<sup>2</sup>; whilst forty years later, the commanding colonel, together with the justices, was instructed to report the number of inhabitants qualified in estate to provide and maintain a man and horse, or to serve as troopers themselves; and also the number who could be enlisted in the ranks as footmen or infantry.<sup>3</sup>

How many soldiers were the authorities able to raise in an emergency? Berkeley, in 1671, estimated that, at this time, eight thousand horse at least might, by extraordinary exertions, be called into the field.<sup>4</sup>

<sup>1</sup> Minutes of the House of Burgesses, Oct. 7, 1696, B. T. Va., vol. lii.

<sup>2</sup> Robinson Transcripts, p. 239.

<sup>3</sup> Colonial Entry Book, 1680-95, p. 249. In 1680, Major-General Smith, addressing a letter to the commanding colonel of each county in his district, ordered him to send to Jamestown a list of all resident housekeepers and freemen able to bear arms, and also a list of each company and troop actually organized. See letter of General Smith, Nov. 20, 1680, Colonial Papers, vol. xlv., No. 54.

<sup>4</sup> Henning's *Statutes*, vol. ii., p. 51.

According to Chichely, there was, during the following year, in the Colony, an organized militia numbering twenty regiments of foot and twenty of horse.<sup>1</sup> In 1681, Culpeper reported that there were then in Virginia at least fifteen thousand fighting men; but he probably included the agricultural servants, who, as we have seen, were not admitted as a body to the ranks of the trained bands.<sup>2</sup> The actual strength of the military arm of all the counties at this time was estimated at seventy-two hundred and sixty-eight footmen and thirteen hundred horse, a disciplined force reaching a total of eighty-five hundred and sixty eight.<sup>3</sup> A few years later, however, Howard stated that the number of footmen on an effective military basis did not exceed three thousand.<sup>4</sup> At the close of the century, and nearly twenty years after Culpeper's report was made, Beverley calculated that the available military power of Virginia, as represented in its whole population, fell little short of eighteen thousand men.<sup>5</sup> But the military force enlisted in the militia in actual service was not so formidable; it embraced forty troops of

<sup>1</sup> British Colonial Papers, vol. xxi., No. li.

<sup>2</sup> Culpeper's Report, British Colonial Papers, vol. xlvii., No. 105.

<sup>3</sup> Letter of General Smith to the Virginia Colonels, Colonial Entry Book, vol. xlvi., No. 54.

<sup>4</sup> B. T. Va. Entry Book, vol. xxxvi. p. 1. It was in this year that Nicholas Spencer complained that "little could his Excellency (Howard) persuade with them (the Virginians) so to form the militia as in time of danger to render it useful for the defence of the country against our old Indian enemies, or other foreign enemies, and also to make it awful to unruly home spirits. The easy inclinations of some (though good) men was so wrought on by slight insinuations of ill humoured spirits that neither of those so necessary laws was adopted"; British Colonial Papers, vol. lix., No. 58.

<sup>5</sup> Beverley's *History of Virginia*, p. 218.

horse and eighty-three companies of foot, a total of eight thousand, two hundred and ninety-nine soldiers.<sup>1</sup>

Each county was directed to keep in an organized state a body of troops, both horse and foot, or either foot or horse, in proportion to the number of its inhabitants fitted to perform military service. For instance, in 1686, when the House of Burgesses, with great energy, sought to place the militia under the regulations of the English system, it was provided that the counties of Henrico, Charles City, James City, Elizabeth City, Warwick, York, Surry, Isle of Wight, Nansemond, Lower Norfolk, Westmoreland, and Northumberland should respectively raise one troop of horse and one company of foot; Middlesex, Stafford, Accomac, and Northampton, each one troop of horse; Lancaster and Rappahannock, each two; whilst New Kent and Gloucester were required to raise respectively two troops of horse and two companies of foot.<sup>2</sup>

The number of soldiers whom each county about this time could furnish is indicated by the reports returned for Middlesex and Lancaster: in 1687, there were in the former, fifty-one persons able to find a man, horse, and arms, and eighty-seven able to serve as footmen.<sup>3</sup> In the same year, there were in Lancaster two hundred

<sup>1</sup> B. T. Va. 1697, vol. vi., p. 73. In 1680, there were about sixty men in a company and forty men in a troop beside the officers; see Letter of Major-General Smith, Nov. 20, 1680, British Colonial Papers, vol. xlv., No. 54. In 1691, a troop was required not to exceed fifty men and a company seventy; Minutes of Council, British Colonial Papers, 1680-95.

<sup>2</sup> Minutes of Assembly, Nov. 3, 1686, Colonial Entry Book, 1682-95, p. 252.

<sup>3</sup> Middlesex County Records, Orders Nov. 23, Dec. 14, 1687.



and four persons fit to be enrolled in the latter capacity<sup>1</sup>; whilst in Lower Norfolk, there was a sufficient number to form five companies, which, in the proportion of sixty to the company, represented a fighting force of three hundred.<sup>2</sup> Five years after these reports were sent in, it was stated that all the white men inhabiting the Colony, except those required to "look after the stocks at home," were engaged in performing military duties.<sup>3</sup>

Whilst every white man, not a servant, who had reached the legal age was, unless specially exempted, forced to enter the militia, yet when he took part in an expedition designed for the Colony's defence, which necessarily exposed him to danger, and for a period more or less extended, drew him away from his regular employment, it was thought to be only proper that he should receive some compensation. This feeling, however, did not prevail at all times. In 1682, not long after the people had been greatly alarmed by the imminent prospect of an Indian attack from the north, Colonel George Lyddall and Captain John Foster petitioned the General Assembly for an appropriation in the public levy in recognition of their extraordinary services. That body, instead of complying, rebuked them sharply for this self-seeking act. "Militia officers and soldiers," they declared "ought, in case of sudden invasion, inroad, or incursion of any Indian enemy or others, to defend their counties without any allowance from the public for the same."<sup>4</sup> At this hour, the

<sup>1</sup> Lancaster County Records, Orders Nov. 29, 1687.

<sup>2</sup> Lower Norfolk County Records, Orders Nov. 30, 1687.

<sup>3</sup> Memorial about the College, 1692, B. T. Va., 1692, No. 118.

<sup>4</sup> Minutes of Assembly, April 10, 1682, Colonial Entry Book, 1682-95, p. 140.

General Assembly were experiencing a sensation of relief over the final dissipation of the supposed peril which had long clouded the spirits of the people, and as this feeling was shared by all, they thought that it should be accepted as a sufficient reward for whatever service any citizen may have performed at a moment deemed so critical. Other General Assemblies, however, did not always take this view; and it was natural that they should not, unless the safety of the whole country was in jeopardy, at which time it seemed to be dictated by the law of self-preservation that every man who could shoulder a gun should spring to the protection of the Colony regardless of personal loss or hope of remuneration.

The House of Burgesses undertook, in 1686, to re-organize the militia according to the English system, and among the most important provisions which they discussed were those relating to the remuneration of persons employed in military service. It seems to have been finally agreed that every trooper actively engaged in performing military duties should receive fifteen pounds of tobacco, or one shilling and sixpence, per diem, whilst the footman was to receive ten pounds of tobacco, or one shilling for the same length of time. One hundred pounds of that commodity was to be paid per diem to the captain of a troop of horse, sixty to the lieutenant, fifty to the cornet, and thirty to the corporal; and the stipend of the corresponding officers in the companies of foot was, in each instance, to be just ten pounds less.<sup>1</sup> These wages, which were to change only with the advancing or declining price of tobacco were to be raised by an assessment in the regular levy; and each

<sup>1</sup> Minutes of Assembly, Nov. 3, 1686, Colonial Entry Book, 1682-95, pp. 252, 350.

county was to be liable for the amounts due the officers and soldiers furnished by itself.<sup>1</sup>

<sup>1</sup> B. T. Va., 1692, No. 118; Minutes of Assembly, British Colonial Papers, 1682-95, p. 350. By the provisions of a law passed in March, 1675-6, a footman assigned to garrison duty on the frontiers was paid at the rate of 1500 lbs. of tobacco per annum, and a horseman at the rate of 2000; a captain was paid 600 lbs. per month, a lieutenant, 400, an ensign, 300, a sergeant, 250; and a corporal, 150; see Hening's *Statutes*, vol. ii., p. 333. These wages were for terms of service lasting only a few months. By a later Act, a horseman was allowed 2250 lbs. per annum; see Hening's *Statutes*, vol. ii., p. 341. In 1679 the wage of a member of the garrison designed for each of the four forts recently ordered to be built was to be 200 lbs. of tobacco per month for the private soldier, 1200 for the captain, 850 for the lieutenant, 600 for the cornet, and 850 for the surgeon; Hening's *Statutes*, vol. ii., pp. 433-40.



## CHAPTER II

### General Regulations: The Officers

DURING the Colony's early history, the military supervision of each Hundred seems to have been imposed on an officer known as the commander.<sup>1</sup> An Act of Assembly passed in 1623-4 charged him with the special task of supplying every settlement within the area of country subject to his oversight, with a sufficient quantity of powder and shot and other ammunition; and he was also required to see that the arms were kept complete, and the guns fixed and ready for use on the shortest notice.<sup>2</sup> As the bounds of the cultivated plantations had, by 1624, spread out widely, and as there was a prospect that the size of the population would now rapidly increase, it was considered advisable to choose lieutenant-com-

<sup>1</sup> Brown's *First Republic*, p. 257. There seems to have been, at an early date, an officer known simply as "the marshall." Apparently, Capt. William Newce was the first to fill this place. In 1621, he petitioned for the appointment "because he had ever been exercised in military affairs." He admitted, however, that there was no present need for such an officer "owing to the perpetual league lately made with the Indian King." The marshal was expected to care for the fortifications, the arms, and the troops of the Colony; see Abstracts of Proceedings of Va. Co. of London, vol. i., pp. 111, 119. In 1631, Walter Neale, who was at the time in England, petitioned for the office. It would seem that it had been in abeyance for many years. British Colonial Papers, vol. vi., 1631-33, No. 24.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 127.

manders to assist the commanders in the performance of their duties, upon which the Colony's safety was so vitally dependent. In the course of that year, Thomas Flint was, by Governor Yeardley, nominated as the lieutenant-commander of all the plantations lying on both sides of the Southampton River, where William Tucker was, at this time, the commander-in-chief.<sup>1</sup> Doubtless other appointments were made.

The different commanders in 1626 were ordered to see that every dwelling house was fully protected against an Indian attack by a stout palisade. If any one refused to take part in the work of construction, then some one was to be hired at his expense to do his share in his stead.<sup>2</sup> In the following year, as an additional means of increasing the security of the different settlements, the commander was directed to require every person capable of bearing arms to remain on the plantation belonging to him, or to which he was attached in any character; and should he absent himself, without that officer's permission, for an interval exceeding eight days, he was to be compelled to pay a fine of twenty-five pounds of tobacco for every twenty-four hours he remained away beyond that length of time. Such a regulation as this,—which recalled the strict military code of Dale,—was perhaps intended only for a brief period when there was an urgent necessity for extraordinary precautions in order to disconcert the supposed designs of the wily Indian foe. As hardly five years had passed since the frightful massacre of 1622 had occurred, the memory of that sanguinary event was still fresh in the memory of every one of the colonists. It was this fact which made the

<sup>1</sup> Robinson Transcripts, p. 190.

<sup>2</sup> *Ibid.*, p. 54.

ordinance requiring every citizen's practical confinement to one place appear a proper one in spite of the inconvenience it must have often occasioned.<sup>1</sup> For many years, it was felt that no scheme suggested by a wise foresight could be too onerous or too exacting. In anticipation of a sudden Indian incursion, every commander was impowered to levy, of his own motion, in the area of country under his supervision such a force as would be sufficient to repel an attack of this kind<sup>2</sup>; and this force was the more easily and quickly raised in consequence of the rigid restrictions set upon the movements of those who constituted the militia.

The terms of the commission issued to a commander in 1630 throw light, in a general way, on the duties which he was required to perform at that time,—he was to “command and govern the several plantations and inhabitants” belonging to the area of country under his special charge, an expression interpreted as meaning that he was to conserve the peace, and also to execute the orders received by him from the higher authorities. Above all, he was expected to show the utmost vigilance in discovering the plots and schemes concocted by the Indians against the English, and the most unwearied energy in preventing the terrible mischiefs certain to follow, should these plots and schemes remain uncircumvented.<sup>3</sup> At a later date, the commander acted as the chief commissioner of health for his district.<sup>4</sup> But,

<sup>1</sup> Robinson Transcripts, p. 65.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 148. This was in 1629. In 1628, the commanders seem to have acted also as general conservators of the peace; see Randolph MS., vol. iii., p. 211.

<sup>3</sup> Hening's *Statutes*, vol. i., p. 131.

<sup>4</sup> See a curious proclamation by the “Colonel and Commander” of Northampton, 1667, in which, after a statement that many persons were suffering from smallpox in the county at this time,



from some points of view, the duty of most dignity and responsibility performed by him was performed as the head of the bench of justices for that district; all the orders of this court were originally drawn in the name of the "Commander and the Commissioners"; and this continued to be the case for many years after the formation of the system of counties.

As soon as the shire system was established, a commander was appointed for each of the counties. His importance seems to have been increased, and not diminished, by the contraction of his territory; and he is found engaged in performing an even greater variety of duties than before. In 1641, for instance, when, under the provisions of an Act of Assembly, stores had to be erected to receive all the tobacco of the Colony previous to its being paid out or shipped abroad, the commander of each county was enjoined by proclamation to see that the proper ones were built within the bounds subject to his supervision.<sup>1</sup> It was incumbent on him, not only to require the people to attend the religious services held on Sundays and holidays, but also, in special cases, to superintend the construction of a new church; or at least to see that it was completed. It was in harmony with this, that, in 1641, the building of such an edifice at Sewell's Point was confided to the general

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warning is given to all families affected to allow no member "to go forth their doors until their full cleansing, that is to say, thirtie dayes after their receiving the sd smallpox, least the sd disease shoulde spreade by infection like the plague of leprosy . . . such as shall no-things notice of this premonition and charge, but beastlike shall p'sume to act and doe contrarily, may expect to be severely punished according to the Statute of King James in such case provided for their contempt herein; God save the King." Northampton County Records, vol. 1655-58, last part, folio p. 19. This volume is improperly marked; see Orders January 7, 1667.

<sup>1</sup> Accomac County Records, vol. 1640-45, p. 85, Va. St. Libr.

charge of the commander of Lower Norfolk.<sup>1</sup> It was his duty also to see to the enforcement of all the laws relating to tobacco culture. Apparently, too, he reported to the Governor and Council the name of every person who had just arrived in the Colony and settled in his county; and he seems also to have taken an annual census of those of its inhabitants who were fitted for military duty. In 1642-3, the commanders were made the principal custodians of the public powder which, in the course of that year, was distributed in barrels among the different counties.<sup>2</sup> About this time, each of these important officers received an annual salary of six thousand pounds of tobacco, a remuneration in proportion to the heavy and varied responsibilities of the position.<sup>3</sup>

Whenever a commander was compelled to absent himself from the Colony for a considerable length of time, the rule previous to the middle of the century was for him to recommend to the Governor and Council some temporary substitute well fitted by ability and experience to fill the place. When, in 1641, Captain John Upton, of Isle of Wight, was about to set sail for England, he requested the nomination to the office of commander of that county, then occupied by himself, of Joseph Salmon, who was to hold it until Upton returned to Virginia. And Salmon was promptly appointed to the vacancy.<sup>4</sup>

At this time, the commander was impowered to choose all the military officers who were to be subordinate to himself; but before his nominations could become final,

<sup>1</sup> Lower Norfolk County Records, Orders May 2, 1641.

<sup>2</sup> Henning's *Statutes*, vol. i., p. 277.

<sup>3</sup> *Ibid.*, p. 294.

<sup>4</sup> Robinson Transcripts, p. 25.

they had to receive the approval of the Governor in his capacity as the head of the Colony's military system.<sup>1</sup> These officers, in 1645, consisted of a lieutenant for the whole county, and of a deputy lieutenant for each of the precincts into which it was divided.<sup>2</sup> A few years later, during the existence of the Commonwealth, important modifications were made in the general military administration of the different counties; and this extended to the appointment of the junior officers. For instance, in 1652, Colonel Francis Yeardley, Lieutenant-Colonel Cornelius Lloyd, and Major Thomas Lambert, members of the bench in Lower Norfolk, together with Christopher Burroughs, another member, were, in very critical periods, authorized by Act of Assembly to choose all such officers; they were required, in addition, to see that the soldiers were drilled, and that their guns were properly fixed; but above all, they were required to call the people to arms in an emergency, whether it was to repel an Indian incursion, or to resist a foreign invasion. They were also instructed to retain in their custody the supplies of public powder. They alone were empowered to carry out the military orders of the General Assembly as well as of the Governor and Council.<sup>3</sup> The same system was at this time in operation in all the counties. The group of men who

<sup>1</sup> Hening's *Statutes*, vol. i., p. 294.

<sup>2</sup> *Ibid.*, p. 300. Northampton, by order of the county court, in 1644, was divided into ten districts, and a justice of that court placed at the head of the military organization for each district; see Records, Orders April 30, 1644. The officers appointed in 1651 for these different districts were chosen by Nathaniel Littleton, a member of the Council, under the authority granted by his commission. Each enjoyed the rank and title of captain; one major was also named; Records, vol. 1651-54, p. 47.

<sup>3</sup> Lower Norfolk County Records, vol. 1651-56, p. 22. In 1680, similar instructions were given by Major-General Smith to all the



in each exercised military control were designated as the "commissioners of militia." The four commissioners were nominated simultaneously with the justices of the county court; and not only were they members of that court, but three of them at least were always members of the quorum.<sup>1</sup> The General Assembly reserved to itself the right to suspend a commissioner at any hour, and to name another justice in his place.<sup>2</sup> During the whole of this interval, a major-general, appointed by that body, was in charge of the Colony's military administration. This office, in 1659-60, was filled by Colonel Mainwaring Hammond, who had won distinction in the English civil wars.<sup>3</sup>

After the restoration of the royal authority in Virginia, the Colony was divided into four military districts. The first, Jamestown being its centre, was placed in Berkeley's immediate charge, while each of the other three was under the direct control of a major-general, the most prominent of whom was Richard Bennett, an occupant of the post of Governor during the period of the Commonwealth. Each major-general was assisted by two adjutants. In every one of the counties composing a district, there was a regiment of foot commanded by a colonel and a group of subordinate officers; and in some, there was also a troop of horse, commanded by a captain, lieutenant, and ensign. Whenever the various troops of horse were

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colonels under his command; see Letter, Nov. 20, 1680, British Colonial Papers, vol. xlv., No. 54.

<sup>1</sup> In 1653, the commissioners of militia for Westmoreland county were Col. Thomas Speke, Lieut.-Col. Nathaniel Pope, Major John Hallows, Capts. Thomas Blagg and Alex. Burnham; see Records, Orders April 4, 1655.

<sup>2</sup> Randolph MS., vol. iii., p. 270.

<sup>3</sup> Hening's *Statutes*, vol. i., p. 545.

drawn together so as to form a large body of cavalry, they were placed under the command of a single superior officer, to whose orders alone the different captains and their subordinates were subject.<sup>1</sup> The system of militia commissioners prevailing in the time of the Protectorate was still in operation as late as 1672; during this year, Lemuel Mason, the first of the quorum for Lower Norfolk, requested Governor Berkeley to appoint to the board for that county certain members of its bench of justices, whose names he mentioned; and following what was, no doubt, the usual course, Berkeley promptly complied with his petition.<sup>2</sup>

Apparently, this system was not proving entirely satisfactory when Howard's term as Governor began; or at least he thought it to his interest to represent it in that light; for in 1687, he wrote to the English authorities that he had succeeded in imparting to the system greater method by appointing the members of the Council to the positions of local commanders-in-chief. As the number of members was too small to supply a separate officer of this rank for each county, it is probable that, after this change went into effect, the same Councillor acted as colonel for the whole group of counties for which he served as collector of customs; this was rendered the more practicable by the fact that after, if not before, 1691, there was a deputy commander or lieut.-colonel nominated for each county, who, no doubt, performed all the duties

<sup>1</sup> Ludwell to Arlington, 1666, Winder Papers, vol. i., p. 206; British Colonial Papers, vol. xx., No. 125, 125 I. In 1680, Col. Joseph Bridger was the commander of the horse belonging to Isle of Wight, Surry, Nansemond, and Lower Norfolk counties, and Colonel Richard Lee, of the horse belonging to Westmoreland, Northumberland, and Stafford.

<sup>2</sup> Lower Norfolk County Records, vol. 1666-75, p. 131<sup>2</sup>.

discharged by the commander or colonel when each county possessed one such officer of its own. The plan was for the Councillor, serving as commander-in-chief for a group of counties, to receive orders from the Governor and to transmit them to each of the deputy-commanders or lieut.-colonels residing in a different county. The deputy commander, however, was authorized to raise troops of his own motion in the emergency of a sudden invasion, whether Indian or foreign; and he was only required to send in afterwards a report of his proceedings; which he could do either to the Governor, or the Commander-in-chief of the group of counties embracing his own.<sup>1</sup>

A list of military officers for each county in 1680, which has been preserved, shows the gradations in rank prevailing at that time. In Henrico, the militia, consisting of foot, were commanded by a colonel, lieut.-colonel, a major, and a captain. Besides the first three of these officers, there were in Charles City three captains, and also a lieut.-colonel and captain of horse. In James City, there were a colonel, major, and two captains of foot, and one captain of horse; in Isle of Wight, a colonel and major of horse, and a colonel, lieut.-colonel, major, and captain of foot; in Surry and Lower Norfolk respectively, a colonel, major, and captain of foot, and also a captain of horse; in Nansemond, a colonel, lieut.-colonel, two captains of foot and also one of horse; in Elizabeth City, a colonel and major of foot and a captain of horse; in New Kent, a colonel, lieut.-colonel, major, and two captains of foot

<sup>1</sup> B. T. Va., Entry Book, vol. xxxvi., p. 1; Orders of Council, May 18, 1691, Colonial Entry Book, 1680-91. The commander-in-chief was simply a colonel, and the deputy-commander, a lieut.-colonel.



and two captains of horse; in York, a colonel, major, and two captains of foot; in Gloucester, for foot and horse respectively, a colonel, lieut.-colonel, major, and captain; in Rappahannock, a colonel, lieut.-colonel, major, and two captains of foot, and a colonel and captain of horse; in Middlesex a colonel, lieut.-colonel, and major of foot, and also a captain of horse; in Lancaster, a colonel, lieut.-colonel, major, and captain of foot.

This list embraces the great majority of the counties into which Virginia was divided at this time; and it shows for each, with very few exceptions, a full complement of military officers.

The men who bore these military titles were the foremost in all the various departments of action represented in the Colony. The list of colonels or commanders-in-chief included such influential members of the community at large as the elder William Byrd, of Henrico county; Edward Hill, of Charles City; Thomas Ballard, of James City; Joseph Bridger, of Isle of Wight; Thomas Swann, of Surry; John Lear, of Nansemond; Lemuel Mason, of Lower Norfolk; Charles Morryson, of Elizabeth City; John West, of New Kent; John Page, of York; Augustine Warner, of Gloucester; John Stone, of Rappahannock; Christopher Wormeley, of Middlesex; William Ball, of Lancaster; and William Pierce, of Westmoreland. Among the deputy-commanders or the lieut.-colonels were such prominent citizens as John Farrar, Daniel Clark, John Pitt, William Browne, John Milner, Robert Bray, John Lyddall, Lawrence Smith, William Lloyd, John Burnham, John Carter, Isaac Allerton, William Waters, and Cadwalader Jones. The list of majors included leading men like Thomas Chamberlaine, John

Mottrom, William Spencer, Charles Scarborough, John Stith, Thomas Taverner, Samuel Swann, Anthony Lawson, Otho Thorpe, Francis Burwell, Robert Beverley, Edward Dale, and Thomas Yewell; among the captains were Hancock Lee, William Custis, Edmund Scarborough, William Randolph, John Goodridge, Thomas Goodwyn, Adam Keeling, Francis Page, Richard Booker, and Leroy Griffin.<sup>1</sup>

The list of officers serving in the militia in still another year shows that the very best talents which the Colony could furnish were employed for the country's defence at that time also. Among the colonels or commanders-in-chief for the different counties were the elder William Byrd, Edward Hill, Benjamin Harrison, Miles Cary, Philip Ludwell, Edmund Jennings, Mathew Page, Ralph Wormeley, Robert Carter, Richard Lee, George Mason, Charles Scarborough, and John Custis, all men of wealth and great social and political influence. Among the deputy commanders or lieut.-colonels were William Randolph, Thomas Ballard, Mathew Kemp, William Moseley, Joseph Ball, Willoughby Allerton, and Nathaniel Littleton,—men hardly less conspicuous in the community at large than the superior officers already named. And equally distinguished were many of those occupying the rank of major; such, for instance, as Thomas Swann, John Thoroughgood, Anthony Armistead, William Bassett, Peter Beverley, Rodham Kenner, Thomas Lloyd, Edmund Scarborough, and William Waters.<sup>2</sup>

<sup>1</sup> List of Civil and Military Officers, 1680, British Colonial Papers, vol. xlvi., No. 81.

<sup>2</sup> Minutes of Council, B. T. Va., vol. liii. The following contains a full list of the officers of a New Kent troop (1699-1700): William Bassett, colonel and lieut.-colonel; Francis Burwell, lieutenant and

The prominence of the citizens filling the different military positions was not characteristic of these two years alone,—it will be found to have distinguished all the men occupying the same grades during every period of the Seventeenth century. The reason for this is quite plain,—serving as officers in the militia did not simply create an opportunity for personal display on occasions when an entire county's inhabitants were present to take part in the muster drill; it meant far more even than the gratification of a taste for military exercises, for, in the end, every officer was certain to have an experience of actual warfare in some of its harshest forms,—long and fatiguing marches in all kinds of trying weather, through thick forests and over swollen streams; an increasing vigilance by night and day to avoid the ambushes of the wily savages; and finally, perhaps a desperate battle from behind boulders, logs, and trees. It was not merely to a parade or a promenade that the officers of the militia had to look forward, but to the dangers and perils springing from the presence of a cunning and implacable foe, to be circumvented only by the coolest bravery, and by the most thoughtful prudence. The most ordinary foresight, therefore, dictated that, when the appointment of these officers was to be made, the most capable men whom each county could furnish should be chosen, if for no other reason, to strengthen the confidence of the common soldiers when the hour

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major; Nicholas Meriwether, cornet and captain; John King, guidon and captain; Henry Chiles, quartermaster and lieutenant; William Harman, John Breeding, and David Anderson, brigadiers and lieutenants; Richard Allen, William Lacey, and John Parkes, Jr., sub-brigadiers and cornets. These names represented the foremost families in this county; B. T. Va., vol. viii., Doct. 53.



for fighting arrived. The prospect of personal peril must in itself have been a powerful inducement to the younger members of the principal families to seek a position higher than that of the file; should war break out with the Indians, it was the officer who would occupy the chief post of danger, and it was also the officer who would enjoy the best chance of winning distinction,—a combination that has always appealed irresistibly to the minds of those who have in their natures the promptings of ambition and a thirst for adventure. The general uneventfulness of the plantation life very probably caused these men to relish the more the different excitements always experienced by the officers called out to repel an Indian attack, so often so suddenly precipitated against the outlying settlements. The appalling features of warfare with a foe regardless of all the amenities of civilized combat must also have had its effect in stimulating that patriotic feeling which was no small factor among the motives causing the foremost citizens to apply for positions of command in the militia. And appointment to such a position as involving the defence of every fireside, tended also to enhance that general influence in the community at large already enjoyed by the man filling it.

Throughout the Seventeenth century, the commander-in-chief or lieutenant-general of the whole Colony was the Governor, as the representative of the King. To him, even the different major-generals appointed from time to time were subordinate. The Governor, or as he was then known, the President of the Council, was, by the instructions given at the Colony's foundation, impowered to exercise military control over all the captains and soldiers stationed

there<sup>1</sup>; and these instructions were repeated whenever a new Governor was appointed, whether it was during the time of the Company's administration or the Crown's. Howard's commission, granted in 1685, authorized him expressly, first, to levy and arm all the inhabitants subject to military duty and to transfer them, as he thought advisable, from place to place; secondly, to execute martial law in time of war; and thirdly, with the Council's advice and consent, to build forts and erect fortifications, and provide both with the necessary ordnance.<sup>2</sup>

As commander-in-chief of the whole Colony, the Governor attended the different musters, made tours of inspection, and reviewed the companies of rangers stationed at the heads of the rivers. In the same character, he settled all disputes arising among the officers of the militia, and decided all questions specially affecting the usefulness of the service. No Governor was more active and indefatigable in performing the military duties of his position than Nicholson, a man who never failed to encourage whatever was calculated to protect as well as to advance the Colony's interests.<sup>3</sup> He was constantly visiting the different parts of Virginia in order to strengthen the military arm; in one

<sup>1</sup> Orders of Council, 1606, Brown's *Genesis of the United States*, vol. i., p. 77.

<sup>2</sup> Colonial Entry Book, 1685-90, pp. 11, 12.

<sup>3</sup> Minutes of Council, Aug. 24, 1692, Colonial Entry Book, 1680-95. Nicholson was interested in the musters from a social as well as from a military point of view, for he said that "they tended to divert the people from melancholy thoughts," B. T. Va., 1692, Colonial Entry Book, 1680-95. In 1699, we find him reconciling the differences which had disorganized the militia of New Kent; he ordered a general muster to be held at the court-house on Nov. 14th, and promised himself to be present; Minutes of Council, Oct. 26, 1699, B. T. Va., vol. liii.

of these tours, he reviewed the militia of Elizabeth City, Warwick, Accomac, and Northampton counties. Andros too was not slow in imitating so zealous an example; not long after his arrival at Jamestown to assume the duties of the Governorship, he made a journey to several divisions of the Colony in order to form, by personal inspection, an accurate conception of its military needs.<sup>1</sup>

The Governor and Council often sat as a council of war, and their decisions in that character very frequently had consequences of the highest importance.<sup>2</sup>

<sup>1</sup> B. T. Va., 1692, No. 123.

<sup>2</sup> Robinson Transcripts, p. 241.



## CHAPTER III

### General Regulations : Arms and Ammunition

**W**HAT were the arms and ammunition used by the militia of Virginia during the Seventeenth century? How were these different articles when needed, obtained?

For many years after the Colony's foundation, armor continued to be worn there in time of war, although it had been practically discarded in England as no longer affording protection against the impact of a bullet. The reason lay in the special weapons of the Indians; until, by trade with white men, they procured an ample supply of guns, powder, and lead, a fine suit of steel was capable of resisting any implement they might bring to bear, whether it was the bow and arrow, or the tomahawk. In the beginning, armorers were constantly sent out from England to Jamestown in order to repair the coats of mail, which, at this time, proved to be so serviceable; but the means of shielding the body was not confined to head-pieces, coats, and corselets of metal,—quilted coats and jackets and buff coats were also used with almost equal success. The personal weapons now relied upon by the soldier in attack or defence were snaphaunce

pieces, matchlocks, muskets, pistols, petronels, swords, rapiers, hangers, and daggers. Writing of this early period, Smith stated that there was scarcely a man in the Colony who was not furnished with "a piece, a lock, a coat-of-mail, a sword or rapier."<sup>1</sup>

Although, during these first years, the very existence of the settlement at Jamestown depended upon the completeness of all the military arrangements, yet as late as 1611 no house for either the weapons or the powder had been built. The vigilant and practised eye of Dale, fresh from the wars in the Low Countries, perceived the need of such storehouses as soon as he disembarked.<sup>2</sup> So slenderly, however, was Virginia provided with ammunition six years later that Governor Argoll considered it prudent to issue a proclamation forbidding the waste of powder in wanton firing.<sup>3</sup> The Indians soon observed the small use made of the gun by the colonists in consequence of this general order, and not understanding the real cause, but supposing that the "English pieces were sick," took advantage of it to fall upon the outlying settlers, many of whom they were able to slay by the suddenness of their attack.<sup>4</sup>

The appalling Massacre of 1622, which showed in such a distressing manner how great was the need of guns and ammunition on the plantations at that time,

<sup>1</sup> *Works of Captain John Smith*, vol. ii., p. 258, Richmond edition. At Smith's departure for England, there were three hundred small arms in the Colony, such as muskets, snaphaunces, firelocks, etc. *Works of Captain John Smith*, vol. i., p. 240, Richmond edition.

<sup>2</sup> Brown's *Genesis of the United States*, vol. i., p. 492.

<sup>3</sup> "No man to shoot but in defence of himself against enemies until a new supply of ammunition comes, on pain of one year's slavery"; Randolph MS., vol. iii., p. 144.

<sup>4</sup> A Briefe Declaration, *Colonial Records of Virginia*, State Senate Doct., Extra, 1874, p. 78.

led the London Company to petition the King that a large quantity of armor, then lying in the Tower, should be sent out to Virginia, where it might be of use in the fights with the Indians, "though of no use for modern science." The King complied. His gift consisted of one hundred coats and forty jackets of mail, four hundred jerkins or shirts made of the same metal, and two thousand iron skulls; and in addition, there were one thousand halberts and bills, two thousand pistols, and five hundred targets and bucklers.<sup>1</sup> He also furnished twenty barrels of powder; to be returned, however, by the end of five months. But two years later, he presented the Colony with a last<sup>2</sup>; which was so greatly needed at this time that the General Assembly had been led to pass an Act directing the different commanding officers to put a stop to all waste of this invaluable article at entertainments, at which free drinking was likely to make the people reckless in its expenditure.<sup>3</sup>

The following table gives a closely approximate statement of the resources in arms and ammunition possessed by the Colony about the years 1625 and 1626<sup>4</sup>:

<sup>1</sup> Abstracts of Proceedings of Va. Co. of London, vol. ii., p. 7; Colonial Entry Book, 1606-1662, p. 203; British Colonial Papers, vol. ii., 1622-3, No. 9. Lord St. John, in November, 1622, presented the Colony with fifty coats of mail, which were carried over in the *Abigail*; Abstracts of Proceedings of Va. Co. of London, vol. ii., p. 18. The piece of armor discovered at Jamestown when earthworks were thrown up there during the War of Secession was not improbably one of those presented by King James or Lord St. John. This piece is now preserved among the collections of the Virginia Historical Society.

<sup>2</sup> British Colonial Papers, vol. iii., Nos. 19, 33.

<sup>3</sup> *Ibid.*, 1624-5, No. 9.

<sup>4</sup> *Ibid.*, 1624-5, No. 35.



TABLE, RESOURCES OF THE COLONY IN ARMS AND AMMUNITION  
1625-26

	Coats of Mail.	Powder by Pounds.	Lead by Pounds	Armors.	Pieces.	Swords.
College Land.....	..	11½	52	17	16	6
Neck of Land.....	13	40½	258	11	28	15
West Shirley Hd.....	16	66	508	8	45	2
Jordan's Journey.....	26	35½	704	13	37	..
Chaplain's Choice.....	5	22	340	7	12	..
Persey's Hd.....	5	10	253	19	18	32
Paspeheigh.....	4	19	60	15	24	6
Maine.....	..	39	..	9	18	..
James City.....	79	79	784	27	54	57
James Isd.....	1	11	38	15	24	9
Neck of Land, Jas. Cy.	2	7	100	1	13	4
Archer's Hope.....	..	16	122	8	12	7
Burrows Hill.....	2	3	42	2	5	..
Pace's Paines.....	..	27	115	9	12	3
Roger Smith's Plantn.	..	16	..	10	10	9
Blaney's Plantn.....	..	7	12	7	19	12
Saml. Matthews.....	24	11	300	..	18	..
Crowder's Plantn.....	..	3	50	6	12	6
Geo. Sandys.....	31	26	330	..	10	..
Hog Island.....	10	39	190	..	17	11
Martin Hd.....	13	85	366	14	26	31
Mulberry Isd.....	..	50	..	22	37	42
Warrosquoicke.....	11	43	300	30	9	12
Newport's News.....	..	10	200	20	16	20
Elizabeth City.....	23	142½	2799	62	208	97
Hampton River.....	7	68	767	31	73	20
Eastern Shore.....	4	145½	641	21	30	3
Total.....	276	1032	9331	384	803	404

There should be added to the stores summarized in the preceding table one buff and eighteen quilted coats, twenty coats of steel, ten corselets, twenty-two pistols, and twenty-six matchlocks; and also one and a half barrels of powder. From the smallness of the number of pistols found in making this military inventory, it would be inferred that the large collection of these weapons presented in 1622, by King James, either had become useless, or had never arrived in the Colony. In these early years, it was peculiarly neces-

sary to disperse the arms and ammunition among the different settlements so as to afford the people everywhere a means of defence in case of an attack. This was one of the principal lessons taught by the Massacre of 1622. But it was not enough that, in these scattered groups of plantations, there should be storehouses in which the guns, pistols, powder, and bullets, the coats of mail and corselets, could be safely kept; for even if there were storehouses of this kind, the situation of each colonist, living on his own separate estate, and exposed to the unexpected assaults of the wildest and most secretive of enemies, was such that the ordinary weapons could only have been of use to him when they stood ready to his hand. Should he be able to procure them only by going to a common magazine standing several miles off, he would run imminent risk, not only of being cut off himself, but also, in his absence, of having his whole family butchered and mutilated by the tomahawk and scalping-knife of the savage. If the authorities, in recognition of such a danger, distributed the arms and ammunition allotted to the respective districts by the government at Jamestown, not among the different settlements, but among the different land-owners, only a few years must have passed before most of the guns were either broken or destroyed in the pursuit of wild game, or seriously rusted from disuse, whilst the larger part of the powder was consumed either in hunting or in wanton firing, or was lost by mere carelessness.

In spite of the considerable amount of military supplies shown by the report of 1624-5 to be in the Virginians' possession at that time, it is no cause for surprise to find that, at the end of the next two years, the Governor and Council wrote to the Lords Commissioners in England that the store of powder and

bullets in the Colony then was so scanty that it was insufficient for use even against domestic enemies.<sup>1</sup> This fact led, in 1627, to the issuance of a proclamation containing a warning against a wasteful expenditure of powder on the occasion of a public meeting, drinking-bout, marriage, or any other entertainment. There was the more reason for such restraint and economy at this time because a war with the Indians was impending.<sup>2</sup> The Governor earnestly petitioned the King in 1630 to increase the quantity of this material in Virginia by adding to it two or three lasts drawn from his private store.<sup>3</sup> During the following year, Captain Osborne received one hundred and fifty pounds of tobacco for lead which he had furnished the Colony, and eight hundred pounds for buff coats; whilst one hundred were paid another person for the like articles which he too had supplied at his own expense.<sup>4</sup> Among the different kinds of ammunition transported to Virginia in 1641 by the ship *Dorsett* were ten barrels of powder.<sup>5</sup> Only three years later, a general tax, in proportion to the number of tithables last returned to Jamestown, was imposed for the purchase of the like material as well as of shot and lead.<sup>6</sup> And so indispensable to every person for the defence of himself and family was the possession of arms and ammunition considered at this time to be that they were specially exempted from execution at the sheriff's hands to satisfy a judgment.<sup>7</sup>

<sup>1</sup> British Colonial Papers, vol. iv., 1626-28, No. 1.

<sup>2</sup> Randolph MS., vol. iii., p. 210.

<sup>3</sup> British Colonial Papers, vol. v., 1629-30, No. 85.

<sup>4</sup> Hening's *Statutes*, vol. i., p. 171.

<sup>5</sup> British Colonial Papers, vol. x., 1639-43, No. 87, I.

<sup>6</sup> Robinson Transcripts, p. 240.

<sup>7</sup> Hening's *Statutes*, vol. i., p. 297.



George Menifie and Richard Bennett, two of the Colony's most prominent and trusted citizens, were, in 1644-5, appointed commissioners to purchase a large quantity of powder and shot; and in order that they might have a sufficient fund with which to do this, they were empowered to use for this purpose all the public tobacco accumulated in the possession of the different sheriffs.<sup>1</sup> About ten years afterwards, an assessment for the acquisition of the same articles by each county was ordered; and the justices were, at a later date, required to inform the General Assembly as to whether this levy had really been made by them, and also as to whether any ammunition remained in their custody.<sup>2</sup> The fines collected by the local courts for various offences were now for the most part expended in the purchase of powder and shot.<sup>3</sup> It was one of the principal duties of the commissioners of militia appointed for each county to provide four barrels of the former, and a proportionate quantity of the latter, for each regiment of troops subject to their command; and the cost of both was defrayed by a special appropriation.<sup>4</sup> Not infrequently, a private citizen, at his own expense, supplied both arms and ammunition, for which he was afterwards reimbursed in the public levy; as large a sum as six thousand pounds of tobacco was, in 1656, received by Col. Edward Hill to recoup him for such an outlay.<sup>5</sup>

After the period of the Commonwealth ended, each county was empowered to pass a by-law to enable it,

<sup>1</sup> Hening's *Statutes*, vol. i., p. 297.

<sup>2</sup> Randolph MS., vol. iii., p. 256.

<sup>3</sup> *Ibid.*, p. 263.

<sup>4</sup> *Ibid.*, p. 269.

<sup>5</sup> *Ibid.*, p. 273.

by taxation confined to its own inhabitants, to provide as much ammunition as its militia should, by experience, be found to need.<sup>1</sup> In order to increase the quantity of powder on hand, Governor Berkeley, in 1667, urged the English Government to allow no vessel to set sail for Virginia from an English port without ten or twenty barrels of this article, to be paid for by the authorities at Jamestown at a rate representing an advance of fifty per cent. on its price when obtained in the Mother Country.<sup>2</sup> Three years afterwards, the same Governor, in the Colony's name, secured a large quantity of powder and shot, for which, though valued at one hundred and fifty-one pounds sterling, he laid down at once only seventy-five pounds and seventeen shillings. At this time, ammunition for public use was bought by means of an annual public appropriation; and it was in anticipation of such an appropriation that Berkeley made the purchase last referred to, probably under an apprehension that, should he allow the opportunity to pass, the country would, for the time being, greatly suffer. The General Assembly gave directions that the sum of eighty-five pounds and seven shillings should be paid him, presumably by way of reimbursement; whilst the powder and shot acquired were to be distributed among the counties in proportion to the number of their respective soldiers.<sup>3</sup>

In 1673, the General Assembly passed an Act designed to supply the militia with arms and ammunition in larger quantities, and with greater certainty, than formerly.<sup>4</sup> The captains of both horse and foot in

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 238.

<sup>2</sup> British Colonial Papers, vol. xvi., No. 143.

<sup>3</sup> Orders of Assembly, Oct. 3, 1670, Colonial Entry Book, vol. lxxxvi.; Hening's *Statutes*, vol. ii., p. 514.

<sup>4</sup> Only one year had passed since Chichely had stated that twenty

each county were required to take into careful account whatever deficiency in either articles might exist in their several troops and companies, with a view to reporting it to the commanding colonel; or if there should happen to be for a time no such superior officer, then to the justices of the county court. In order to meet the want, whether it consisted of powder and shot alone, or of muskets and swords for the foot, and pistols, carbines, and swords for the horse, a special levy was to be laid by the county as the quickest means of raising the necessary purchase money. At least two pounds of powder and six pounds of shot were to be provided for every common soldier; but all the stores of these two articles were to remain in the officers' custody, and to be distributed only when an occasion for their immediate use arose.<sup>1</sup>

How great was the general deficiency in both arms and ammunition at this time may be judged from the reports made under the terms of this Act by the militia officers of York and Accomac counties. John Page stated that there were wanting in the York troop of horse seven cutlers with waist belts, fifty carbines, and forty cases of pistols and holsters; in Colonel Bacon's regiment of foot, eighty muskets and one hundred and sixty swords and belts; and in the regiment commanded by Colonel Beale, seventy muskets and seventy cutlers. Moreover, there seems to have been no supply of

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regiments of foot and as many of horse had been recently raised, and yet one soldier in every ten was lacking in arms. Unless the King, Chichely declared, "would send some supply of arms and ammunition with cannon and ball for our forts, we must be forced to fly to the mountains for our security, and leave this country and our estates a prey to the invader." There was danger at this time of an attack from the sea; British Colonial Papers, vol. xxx., No. 51.

<sup>1</sup> Henning's *Statutes*, vol. ii., p. 304.



ammunition.<sup>1</sup> The deficiencies of the same character among the Accomac militia were even more remarkable; for instance, Captain John West's company of foot was in need of thirty muskets, seventy swords, and one hundred and sixty pounds of powder; precisely the same want existed in Captain Littleton's; whilst the various articles lacking in Captain Scarborough's numbered seventeen muskets, seventy swords, one hundred and forty pounds of powder, and four hundred pounds of shot.<sup>2</sup> If the deficiency in arms and ammunition in Captain West's company was made good at this time, a like deficiency again arose before many years had passed, for, in 1683, that company is stated to have been wanting in forty carbines, thirty swords, and thirty pairs of pistols, whilst Captain William Custis's was lacking in thirty carbines and eighteen pairs of pistols. Under an arrangement made by the county court, all these arms were afterwards brought in from England.<sup>3</sup>

The Militia Act of 1673 was considered to be so useful and effective that it was renewed in 1675. The officers for the different counties continued to report great deficiencies in both arms and ammunition. In the course of the latter year, the court of Middlesex instructed Colonel Christopher Wormeley and Lieut.-Colonel John Burnham to procure from England eighty firelock muskets, and the same number of swords and belts, for the soldiers under their commands who were lacking in these arms, whilst Major Robert Beverley was ordered to obtain from England also, for his own company's supply, thirty muskets and thirty swords

<sup>1</sup> York County Records, vol. 1671-94, p. 68.

<sup>2</sup> Accomac County Records, vol. 1673-76, p. 174.

<sup>3</sup> *Ibid.*, vol. 1682-97, p. 129.

and belts. The troop of horse under Captain Walter Whitaker were in need of fifteen cases of pistols, fifteen hangers, and forty carbines; and he also was ordered to buy them abroad. These officers, for the amount which they should expend in purchasing the weapons, were to be reimbursed by a levy on the tax-payers of the county at the rate of one hundred pounds of tobacco for every eight shillings actually paid by them.<sup>1</sup> Great precautions were now taken that arms procured at an outlay of so much money and inconvenience should not be subject to the risk of being permanently dispersed after being once distributed for immediate use in a campaign against the Indians, for whose destruction they were chiefly designed. In 1677, an expedition sent against the savages having just returned, the county court of Lancaster issued an order that every person who had participated in it, should, by a certain date, bring to the court-house the musket, sword, carbine, or bandoleer which he had received from either Colonel William Ball or Lieut.-Colonel John Carter.<sup>2</sup> And the course followed by the court in this instance was followed by all the others under the like circumstances.

A large quantity of arms and ammunition was, in 1676, sent out to the Colony from England along with the regiment of regulars dispatched thither in order to suppress the insurrection. It embraced one hundred barrels of powder, one thousand snaphaunce muskets, as many bandoleers, seven hundred carbines, and a varied assortment of bullets and shot, together with flints and hand grenados. The whole collection was valued at an amount equal in purchasing power to

<sup>1</sup> Middlesex County Records, vol. 1673-80, folio p. 58.

<sup>2</sup> Lancaster County Records, Orders Sept. 12, 1677.

fifty thousand dollars.<sup>1</sup> At first, these articles of war were ordered by the Assembly to be stored in the public magazine situated at Middle Plantation,<sup>2</sup> which seems to have been built after the arrival of the English soldiers, many of whom were, for several years, employed in guarding it<sup>3</sup>; but so heavy was the charge entailed by this that, in 1680, it was proposed that its contents should be placed in the custody of several of the "most considerable and loyal gentlemen" in the Colony.<sup>4</sup> An additional reason which appeared to make this step advisable was that, the English regulars having, in consequence of a serious reduction in their wages, become discontented and mutinous, there was ground for apprehending that they would seize the magazine, rifle it of its stores, and then upset the established order.<sup>5</sup> The arms and ammunition were finally distributed among the counties in proportion to the number of their respective tithables.<sup>6</sup>

When, in 1679, Culpeper went out to Virginia to serve as its Governor, he carried thither in the ship

<sup>1</sup> The figures in English money were £2477, 6s., a sum which then had a purchasing power at least four times greater than it would have now. Colonial Entry Book, 1675-81, p. 68.

<sup>2</sup> Hening's *Statutes*, vol. ii., p. 404.

<sup>3</sup> Colonial Entry Book, 1676-81, p. 296; Council Minutes, Aug. 3, 1680, Colonial Entry Book, vol. lxxx.

<sup>4</sup> Council Minutes, Aug. 3, 1680, Colonial Entry Book, vol. lxxx.

<sup>5</sup> "They are much more inclined to disserve his Majesty by mutiny, if not by joyning with ye discontented planters, who with any opportunity and such assistance, I feare might be taught to fly out again into disorders"; see letter of Sir Henry Chichely, May 30, 1682, British Colonial Papers, vol. xlviii., No. 88. One of the companies was, in 1677, billeted in Nansemond and Isle of Wight counties, and many of the soldiers remained there after the regiment was disbanded. Five shillings a week was paid for the board of each soldier; see Isle of Wight County Records, vol. 1662-1715, pp. 359, 376.

<sup>6</sup> Hening's *Statutes*, vol. ii., p. 404.



conveying him one hundred barrels of powder, as many muskets, bayonets, and swords respectively, two hundred cartouch-boxes, and fifteen French tents.<sup>1</sup> These articles had been obtained at an outlay of five hundred and twenty-two pounds sterling, whilst the cost of the articles purchased for his own company's equipment amounted to an additional one hundred and three pounds and fourteen shillings; these consisted of one hundred and three muskets, the same number of bandoleers, three halberts, and two drums.<sup>2</sup> In the course of 1683, Captain John Purvis, at Howard's request, brought over in his ship from England six barrels of corn powder, which at this time was valued at eighteen pounds and fifteen shillings<sup>3</sup>; and in the same year, the King presented the Colony with six barrels.<sup>4</sup> There being now an imminent prospect of a sanguinary war with the Seneca tribe, the Council (Culpeper being absent in London) instructed each collector of customs to procure from vessels arriving in Virginia one thousand pounds of shot and bullets. This was to be credited in their accounts of fort duties.<sup>5</sup> The shipmasters had, for some years, been in the habit of paying these duties in various forms of merchandize.<sup>6</sup>

<sup>1</sup> Colonial Entry Book, 1676-81, p. 374.

<sup>2</sup> British Colonial Papers, vol. lv., No. 7.

<sup>3</sup> *Ibid.*

<sup>4</sup> Colonial Entry Book, 1681-5, p. 255.

<sup>5</sup> *Ibid.*, 1680-95, p. 185. The expression used is, "to provide at the entry of vessels for one thousand weight of shot, etc." It is possible that each vessel was required to pay this quantity.

<sup>6</sup> See Grievances of Isle of Wight County, 1677, Winder Papers, vol. ii., p. 186. In 1683, the Council decided to use the windmill standing at Green Spring near Jamestown as a place for storing the public powder, and a house was built near by for the shelter of the persons employed in guarding it; see Colonial Entry Book, 1680-95, p. 156.

The importance, from a public point of view, of private citizens possessing arms of different kinds was shown again in 1684, as at an earlier date, by the fact that every sword, musket, pistol, carbine, fowling piece, or the like, belonging to a private person was specially exempted from impressment; nor were they subject to seizure in the process of any distress, attachment, or execution.<sup>1</sup> But this solicitude that the people should not, for any reason, be deprived of the means of defence which they possessed as individuals, did not make the authorities less careful in keeping in their own custody the arms they were in the habit of distributing among the militia in emergencies; in 1684, the justices of Rappahannock drew up for publication at the court-house door and from every pulpit in the county, a peremptory order that all persons having any weapons belonging to the public should deliver them up forthwith; and that whoever failed to do so should be compelled to pay three hundred pounds of tobacco for every musket he should hold back, six hundred for every case of pistols, and two hundred for every carbine.<sup>2</sup> The larger proportion of the heavy stores, the Colony's property, being still in the hands of prominent and reliable citizens, it is evident that they did not come within the scope of an order of this kind. Most of these stores were kept at John Page's residence, and he seems to have been allowed a guard for their protection; they consisted of brass guns, mortar pieces, carbines, grenados, bandoleers, cartouch-boxes, drums, daggers, halberts, spikes, muskets, partizans, pikes, swords, saltpetre, and shot.<sup>3</sup>

<sup>1</sup> Hening's *Statutes*, vol. iii., p. 13.

<sup>2</sup> Rappahannock County Records, Orders Oct. 1, 1684.

<sup>3</sup> Colonial Entry Book, 1685-90, p. 65.

In spite of this large and varied collection, there were certain articles of war which, about this time, were constantly imported from the Mother Country; for instance, in 1687, Christopher Robinson, of Middlesex, was instructed by the county court to send thither for two brass trumpets, with silver mouthpieces and hung with black and white silk; one set of colors with staff for a cavalry troop and one for a foot company; two drums with six spare heads, four pair of drum sticks, and two belts.<sup>1</sup> Only a few months afterwards, Col. Wm. Lloyd received orders from the court of Rappahannock to procure from England also four trumpets, two colors for troopers and two for infantry, four drums, two leading staffs, four halberts, and two partizans.<sup>2</sup> The following year, the justices of Westmoreland gave directions to the captain of each company of foot in the county to purchase abroad, for the use of the soldiers under his command, thirty fire-lock muskets, thirty cartouch-boxes, and thirty broad slicing swords with bills. The captains of horse were ordered to send abroad also for thirty bridles and saddles, thirty pairs of pistols with holsters, and thirty hangers. Should these articles, in the course of their transportation to Virginia, be lost at sea, the officers who had bought them in their own names were to be reimbursed by an allowance in the regular county levy; but should the articles arrive safely, the soldiers among whom they were to be distributed were to be required to return to the purchasers the amount paid for each in England. The county, no doubt, intended to see that these

<sup>1</sup> Middlesex County Records, Orders Dec. 12, 1687. Robinson was allowed seven thousand pounds of tobacco for these articles on their arrival; see Orders Nov. 11, 1689.

<sup>2</sup> Rappahannock County Records, vol. 1686-92, orig. p. 62.



purchasers should not suffer by the default of any individual.<sup>1</sup> During the same year, Captain William Lee received from Northumberland three thousand pounds of tobacco for a cornet staff, two trumpets, and other martial articles imported by him, whilst the same number of pounds was paid to Captain Richard Kenner and Captain Brereton respectively, who had each procured from the Mother Country halberts and drum colors.<sup>2</sup>

<sup>1</sup> Westmoreland County Records, Orders March 28, 1688.

<sup>2</sup> Northumberland County Records. vol. 1678-98, p. 446.

## CHAPTER IV

### General Regulations: Arms and Ammunition

*(Continued)*

IN the course of 1689, the supply of powder and ball kept in the public magazine began to run so short that the Council, fearful of the consequences should intestine trouble, Indian incursion, or foreign invasion occur, instructed William Byrd, the Auditor-General, to purchase in England forty barrels of the former article and a proportionate quantity of the latter for muskets, carbines, and pistols. This ammunition was to be paid for by the appropriation of a sum obtained by the collection of port duties.<sup>1</sup> A large quantity of both powder and shot was at this time dispatched to Virginia by the King; but, it would seem, not gratuitously, for in an order of Council issued from Jamestown in 1690, it was stated that each county receiving its pro rata share of this ammunition was, through its justices, to return the amount in tobacco which would be due for it.<sup>2</sup> Neither powder nor shot was now allowed to be exported from the Colony, as the prospect of a French and Indian invasion was

<sup>1</sup> Colonial Entry Book, 1680-95, p. 321.

<sup>2</sup> See Henrico County Records, Orders Dec. 1, 1690; also a letter from Governor Nicholson, dated 1690, and preserved in Colonial Entry Book for 1685-90.

considered to be imminent.<sup>1</sup> The different collectors of customs were also required to take an account of all the ammunition brought into Virginia by different ships for delivery to private citizens; and all citizens themselves were ordered to report the respective amounts they had in their possession.<sup>2</sup>

There was, in 1691, a small quantity of powder remaining undivided among the different counties. Owing to the expense, it was decided to be unwise to build a magazine in which to store this powder, and yet it was considered unsafe to leave it without special precautions to prevent it from blowing up. The Council finally determined to distribute the whole quantity among the commanders-in-chief, with strict directions for its preservation. Four barrels of it were sent to York Fort, two to the fort situated at Jamestown, and the rest was transported to the several counties; some of which received as many as five barrels, but the majority not more than one. There were apparently thirty-four barrels in all; three of these had been in the charge of the elder Nathaniel Bacon, eleven, of Ralph Wormeley, and ten, of Edmund Jennings and Joseph Ring respectively.<sup>3</sup>

At this time, all the muskets and carbines belonging to the different counties were in their several sheriffs' custody, and these officers were ordered to make a full report as to their condition. It was found that such as had not been totally destroyed were almost spoiled by rust, and many were unfixed. The larger number of those still in existence were scattered far and wide among citizens subject to the military summons. The

<sup>1</sup> Minutes of Council, Feb'ry, 1690-1, B. T. Va., 1690, No. 11.

<sup>2</sup> Orders of Council, March 7, 1690-1, Colonial Entry Book, 1680-95.

<sup>3</sup> Orders of Council, May 18, 1691, Colonial Entry Book, 1680-95.



sheriffs having declared that any endeavor to collect them for the purpose of having them fixed either in Virginia or in England would prove too expensive, the Council gave orders that all the arms still remaining of those belonging to the Colony should be delivered at once to such commanders-in-chief as the Governor himself should designate; who, however, was requested to show a preference for the persons in military charge of the frontier counties. All soldiers receiving such arms were required to bind themselves to keep the guns well fixed; and should a militiaman decide to remove his residence to another county, his gun had to be returned to his commanding officer. And this had also to be done by the family of every soldier who had recently died.<sup>1</sup>

It shows the extraordinary scarcity of arms prevailing in the Colony in 1691 that, when William Glover, of Henrico, died and his place in the troop of horse to which he had belonged thus became vacant, that place could not be filled at once, as there was no one possessing the requisite carbine, pistols, and sword. The captain of the troop, William Randolph, having informed the county court of this fact, the justices requested the persons inheriting Glover's arms to sell them to some one who would be willing to succeed him in the cavalry.<sup>2</sup>

There does not appear to have been any dearth of powder at this time,—in one year alone, 1692, as many

<sup>1</sup> Orders of Council, May 18, 1691, Colonial Entry Book, 1680-95.

<sup>2</sup> Henrico County Minute Book, 1682-1701, p. 332. The expression used is "that by ye departure of Mr. William Glover, there is a place in his troupe become vacant." Reference is made to the "division of his estate," from which it is to be inferred that he had died, although it is possible that he had returned to England heavily in debt.

as two hundred barrels of it were sent to the Colony by the English Government. After eighteen had been distributed among York, James City, Nansemond, and Rappahannock Forts, and twenty among the several companies of rangers stationed on the frontiers, the remainder were divided among the different counties; none of which received less than four, nor more than twelve barrels.<sup>1</sup> Extraordinary precautions were adopted to prevent any improper expenditure or waste of this powder; Lieut.-Governor Nicholson instructed its custodians that, as it was reserved exclusively for the country's defence, it should not be used in firings at musters; and with a view to diminishing the chance of loss by explosion, that only two barrels of it should be kept together at any one place.<sup>2</sup> The danger of its destruction in this manner was constantly borne in mind by this official and his Council, in whose discretion all questions relating to its dispersion rested. In order that the quantity kept at Jamestown should not be exposed to any risk of this kind, a small building containing a powder room was, in the course of 1692-3, erected at that place<sup>3</sup>; but so far as is known, there was no structure specially designed for the same purpose standing in any of the other counties. It is probable that in each of these counties the powder was stored

<sup>1</sup> Minutes of Assembly, April 13, 1692, Colonial Entry Book, 1682-95. "The publique Dr. to Henry Gale of Hampton Parish in York County for nine days' service, being imprest by the Rt Honble, the Lt Governor's warrant to transport the County's powder to ye several places appoynt., per the said warrant, at 15 lbs of Tobo p. day." This warrant applied to York county alone; see York County Records, vol. 1690-94, p. 269, Va. St. Libr. The order bore the date of Feby 24, 1692-3.

<sup>2</sup> Nicholson's Proclamation is recorded in York County Records, vol. 1690-94, p. 203, Va. St. Libr.

<sup>3</sup> Orders of Council, Jany. 14, 1692, Colonial Entry Book, 1680-95.



away in some tobacco barn sufficiently remote from dwelling houses to remove all danger of fire, and so well protected against the weather as to render impossible any injury springing from dampness.

When a pressing emergency arose, and the supply of arms and ammunition belonging to the county was insufficient, the justices did not scruple to order the seizure of powder or shot known to them to be the property of the citizens in whose possession it was found. As early as 1643, the judges of Northampton, having reason to apprehend the "great and sudden" calamity of an Indian invasion, gave the sheriff a peremptory command to bring to the court-house all those articles then lying at Mr. John Nuttall's residence; and these were afterwards to be distributed among the county's inhabitants as affording a means of defending their homes from an attack. For this forcible appropriation of his property, Nuttall was to receive full consideration in the form of either tobacco or merchandise, as he should prefer.<sup>1</sup> Among the allowances included in the Lancaster levy for 1657, was one for a drum belonging to Mr. Meredith, who had relinquished it in return for three hundred and fifty pounds of tobacco.<sup>2</sup> A few years later, seventeen citizens of York county were paid in a similar manner for swords and guns, powder and shot which had been impressed.<sup>3</sup> Nor was there any attempt at this time, although the Colony was still poor, to reduce the compensation to the point of niggardness; in 1666, Mr. Moseley received sixteen hundred and twenty pounds of tobacco from Lower Norfolk for only fifty pounds of powder, taken

<sup>1</sup> Northampton County Records, Orders April 28, 1643.

<sup>2</sup> Lancaster County Records, vol. 1656-66, p. 39.

<sup>3</sup> York County Records, vol. 1657-62, pp. 243, 346, Va. St. Libr.



by the authorities from his private stores<sup>1</sup>; and the liberal spirit shown in this instance was not exceptional.

It was in this year that Major-General Smith was impowered by an order of the Governor and Council to demand possession of all powder and shot known to be in the custody of merchants and planters, who, by their situation, were not exposed to imminent danger of attack by an invading enemy. The various articles of war which might be seized under the terms of this order were to be carefully assessed in value and promptly paid for.<sup>2</sup> A large quantity of powder and shot was, in 1673, obtained by this means from a citizen of Northumberland; and about this time, we again find drums impressed in that part of the Colony; Lieutenant Claughton, for instance, was allowed five hundred pounds of tobacco for one; and for another, Major Brereton received four hundred and fifty pounds,—rates of compensation so high that they can only be explained by the difficulty of procuring such an implement.<sup>3</sup> A few years afterwards, two hundred pounds of bullets in the possession of a citizen of Middlesex having been impressed for public use, the owner was remunerated at the rate of three shillings for each pound.<sup>4</sup> It seems to have been the rule that every musket appropriated by a county was to be returned to its owner, provided that no damage had resulted to it from its use; but if irretrievably injured, or lost altogether, it had to be paid for at its full value. Six citizens of Lancaster county, whose guns had been taken, were allowed in

<sup>1</sup> Lower Norfolk County Records, vol. 1666-75, p. 8.

<sup>2</sup> Orders, 1666, Robinson Transcripts, p. 118.

<sup>3</sup> Northumberland County Records, Orders Nov. 7, 1672, Nov. 19, 1673.

<sup>4</sup> Middlesex County Records Levy, Nov. 1, 1675. These bullets may have been delivered in accord with a previous arrangement.

the levy of 1659, fifteen hundred pounds of tobacco, because the authorities were unable to redeliver these guns, as they had, in the course of some expedition, been unintentionally left behind. In 1684, however, as already pointed out, muskets, pistols, carbines, and fowling pieces were specially exempted from impressment in order to encourage the people to provide themselves freely with such arms.<sup>1</sup>

From the Colony's earliest settlement, there was to be found in the hands of private citizens a large quantity of arms of every sort, which they were ready to use when summoned to resist an invasion. The need of such arms as the property, not of the public, but of the planters themselves, was an urgent one during almost every part of the Seventeenth century; for there was not a household residing in the frontier's vicinity which, in time of war, was not in constant apprehension of an Indian assault; and this fear was only slightly allayed in time of peace. But one instrument of protection against this treacherous foe existed, namely, the rifle, and this the colonist could employ with unerring skill. It was not, however, simply for defence against the savages that the gun was valued; during that early period, when the greater part of the country's surface was overgrown with the original forest, the settler was compelled to be on his guard against such fierce wild beasts as bears, leopards, and wolves, and he, no doubt, rarely entered the thick woods, even in the older divisions of Virginia, without such a weapon in his hand. A passionate love of hunting also induced the

<sup>1</sup> Lancaster County Records Levy, Nov. 30, 1659; see also Northumberland County Records, Orders April 17, 1678. The statute granting exemption will be found in Henning's *Statutes*, vol. iii., p. 13.

colonists of that day to purchase fowling pieces, which, in an emergency, could be turned against an enemy.<sup>1</sup>

The inventories of the Seventeenth century throw an instructive light as well on the variety as on the quantity of weapons in private possession available for public defence. A few of these may be mentioned in order to show their general character. First, during the period preceding the middle of the century. Among the effects of Arthur Linney, who resided in Accomac, about 1642, was a pistol manufactured of brass.<sup>2</sup> John Holloway, of Northampton, owned at his death, the following year, five guns and one pistol.<sup>3</sup> William Burdett, also of this county, provided in his will, drawn the same year, that the "two great brass guns" which he expected from England by an early ship should be carefully preserved until his son was of age, and then delivered to him.<sup>4</sup> The personal estate of Philip Felgate, who died in Lower Norfolk, in 1646, embraced, not only a musket, carbine, two fowling pieces, and a pair of bandoleers, but also an old crossbow, one suit of black armor, and one head-piece of white,—articles of equipment probably descending from one of the early settlers, who, in the time of the London Company, had received them as a protection against the Indian arrow. Felgate owned too a large quantity of powder and shot.<sup>5</sup> Swords in great numbers were also held as private property at this time.<sup>6</sup> A bequest of a weapon of this

<sup>1</sup> These private arms were generally ranged around the walls of the halls of the different plantation residences.

<sup>2</sup> Accomac County Records, vol. 1640-45, p. 151, Va. St. Libr.

<sup>3</sup> Northampton County Records, Orders Feby. 10, 1643.

<sup>4</sup> Burdett Will, Northampton County Records, Orders July 4, 1643.

<sup>5</sup> Lower Norfolk County Records, vol. 1646-51, p. 47.

<sup>6</sup> Geo. Eaton, of Lancaster county, left five swords; see Lancaster County Records, Eaton Inventory, 1654.



kind to a friend was now, as afterwards, a common feature of wills, both because it was a peculiarly becoming testimonial of special esteem, and because it was a gift of extraordinary practical value in a community so frequently exposed to attack.<sup>1</sup> The cutlass and rapier, while apparently only rarely the subject of a bequest, were perhaps in far more general use than the sword as a weapon to be carried about the person. There are many instances recorded of their being whipped out suddenly in the course of a violent altercation. In 1643, Captain Ingle, whose ship was then riding in the waters of Northampton, having been very sternly interrogated by Mr. Yeardley, a member of the Council, as to why he was so heavily armed when his vessel was lying in harbor, he hotly replied that he would walk his own quarter-deck as pleased himself. After other angry questions, Yeardley arrested him; but not content with this, in a great heat flashed out his cutlass and shook it menacingly at Ingle's breast.<sup>2</sup> When in the course of the following year, Captain Stone and Peter Walker, of the same county, were wrangling over the value of William Burdett's estate, Stone, suddenly drawing his rapier, turned the hilt towards Walker's body.<sup>3</sup>

After the middle of the century, arms of various sorts became an even more common form of private

<sup>1</sup> For an instance, see Rappahannock County Records, vol. 1664-73, p. 88, Va. St. Libr. In this case, the bequest was from Henry Cox to James Miller.

<sup>2</sup> Northampton County Records, Orders April 28, 1643. Many of these swords were very handsome. Among the arms belonging to Thomas Cocke, of Princess Anne county, was a silver hilted sword; see Records, vol. 1691-1708, p. 161. Captain William Kendall, of Northampton county, also owned such a sword; see Records, vol. 1684-98, p. 499.

<sup>3</sup> Northampton County Records, Orders Sept. 20, 1644.

property. Among the personal possessions of Colonel William Farrar, of Henrico, at his death about 1682 were not only one long sword and three horse pistols, but also one drum, which the appraiser declared should go to the heir or eldest son, as it was stamped with the coat-of-arms of the Farrar family, one of the most distinguished residing in Virginia.<sup>1</sup> Francis Eppes, of the same county, William Farrar's contemporary, left as a part of his personal estate, twelve guns, one long and one pocket pistol, and also a case of horse pistols.<sup>2</sup> Robert Gullock, of Rappahannock, who died about 1678, owned at that time five guns, two cases of pistols, and one scimitar; and John English, of the same county, two pistols, one for the pocket, the other for the holster.<sup>3</sup> Teague Harman, in 1684, bequeathed to William Nottingham, who, like himself, was a citizen of Northampton, a long gun, a pair of pistols and holsters, and a breastplate.<sup>4</sup> A breastplate was also one of the various articles of personality left by John John-

<sup>1</sup>Henrico County Minute Book, 1682-1701, p. 9, Va. St. Libr. The following shows that skill with the rapier was often acquired by the instructions of professional teachers: "Mr. Garrett having to this court brought his account. against John Floyd debt. for that ye said Floyd did agree with him ye Plt. to teach him to play skilfully with those weapons, vizt. Backsword and Rapier, doth much neglect his duty therein; to which ye sd. Floyd appearing and admitting ye sd. contract, and in part ye neglect, doth for ye satisfaction of ye sd. Garrett plt. and his other scholars for ye future oblige himself constantly to attend for two months at ye places where usually they exercise on Monday and Saturday in each week." Henrico County Minute Book, 1682-1701, p. 203, Va. St. Libr.

<sup>2</sup>Henrico County Records, vol. 1677-92, orig. p. 94.

<sup>3</sup>Rappahannock County Records, vol. 1677-1682, orig. pp. 29, 30, 60, 69, 81, 85; see Va. St. Libr. copy of this volume for several of these references.

<sup>4</sup>Northampton County Records, vol. 1683-89, p. 100.

son, of Henrico, at his death.<sup>1</sup> William Bevin, of the same county, by will presented a long gun, having a snap-hammer lock, to his son; and to his son-in-law, a musket.<sup>2</sup> Charles Clay, also of Henrico, possessed at his death a collection of six guns.<sup>3</sup> Thomas Osborne's personal estate included, among other pieces of property, four guns, one carbine and three pistols, valued together at four pounds and five shillings; and it also included a rapier and a breastplate.<sup>4</sup> In 1693, William Axell, of Lower Norfolk, owned one pair of pistols, one small gun, and one small sword. A breastplate also was entered in his inventory.<sup>5</sup> John Foisin, a merchant of French origin, who resided in Henrico at this time, possessed a pair of holsters faced with green plush; a pair of pistols having burnished stocks and locks of French manufacture; a gun of a precisely similar pattern, but also garnished with brass; three guns having walnut stocks, one breastplate, and a scimitar.<sup>6</sup> The inventory of the personal estate of Captain Anthony Smith, of Essex, who died in 1693-4, shows that he was the owner of four guns and a complete set of trooper's arms.<sup>7</sup> Abram Smith, of Northampton, whose death occurred a few years later, bequeathed a long gun to each of his two eldest sons, and a screw gun to his youngest.<sup>8</sup> It is a proof of the extraordinary value attached to a gun at this time that, in each of the preceding instances, the tenure of the

<sup>1</sup> Henrico County Records, vol. 1688-97, p. 211, Va. St. Libr.

<sup>2</sup> *Ibid.*, vol. 1677-92, orig. p. 352.

<sup>3</sup> *Ibid.*, vol. 1677-92, orig. p. 379.

<sup>4</sup> *Ibid.*, vol. 1688-97, p. 350, Va. St. Libr.

<sup>5</sup> Lower Norfolk County Records, vol. 1685-95, p. 203.

<sup>6</sup> Henrico County Records, vol. 1688-97, p. 463, Va. St. Libr.

<sup>7</sup> Essex County Records, Orders Febry. 10, 1693-4.

<sup>8</sup> Northampton County Records, vol. 1689-98, p. 460.



article was for life, and, therefore, carried no right of disposition by will or personal gift. Among the contents of Captain William Kendall's personal estate appraised in 1698, were three large and two small guns, seven muskets, a pair of pistols, three bayonets, one unhilted and two silver hilted swords.<sup>1</sup>

Sometimes, the weapons in a planter's possession remained untouched and uncared for during so long a time that they finally became worthless. The personal property belonging to Joseph Smith of Middlesex, at his death in 1698, included one old sword, so rusty that it could not be drawn from its scabbard; and there were two old pistols so ruined by natural decay that it was impossible to charge them.<sup>2</sup>

During the Seventeenth century one of the most lucrative of mechanical employments consisted of repairing the different military weapons. In the matter of "fixing" guns as it was called,—the term applied to adjusting anew the parts attached for the purpose of igniting the powder,—a smith was not allowed by law to decline to make the change when requested to do so, since a refusal was considered to be directly opposed to the community's safety, dependant as it was upon the guns being always in a condition for use at an instant's notice. The justices of Lower Norfolk, in 1651, issued an order that William Johnson, the county's principal smith, should fix the arms of every

<sup>1</sup> Northampton County Records, vol. 1689-98, p. 499.

<sup>2</sup> Middlesex County Records, vol. 1698-1713, p. 29. The weapons from age not infrequently burst in firing. In 1678, Daniel Wade, of Gloucester county, petitioned for exemption from taxes and military service because at a general muster he had lost a hand by his gun blowing to pieces as he fired it "in the King's and Country's service." Surry County Records, vol. 1671-84, p. 302, Va. St. Libr.

man who should bring them to his shop. As a retaliatory expedition against the Indians was now preparing, which made it of supreme importance that all the guns should be put in good shape, the cost of mending and adjusting them, as well as of restoring the other necessary weapons to perfect condition, was to be met by a general allowance in the next levy. The county, however, was, no doubt, to be reimbursed by the persons whose arms had been repaired.<sup>1</sup>

The General Assembly, as late as 1672, passed an Act declaring that, whenever a smith had mended any arms by request, he should keep an account of the work for submission to the justices of his county at their next term, with a view to its insertion in the first levy to be laid. The public, however, were in the end to incur no loss, as the owners of the weapons were to be required to pay back the amounts charged for restoring them to good condition.<sup>2</sup> In the course of 1691, the smiths throughout the Colony having declined to receive, in the form of tobacco, their remuneration for repairing the arms of the militiamen who had been called out owing to the dangerous times, the Governor and Council adopted an order that the work should be paid for in tobacco, but paid, not by the soldier whose weapon had been repaired, but by the county, in accord with the law of 1672, as in this way, the fullest assurance would be given the smiths that their accounts would be promptly settled.<sup>3</sup>

<sup>1</sup> Lower Norfolk County Records, vol. 1651-56, p. 12.

<sup>2</sup> Hening's *Statutes*, vol. ii., p. 294. An interesting instance of a blacksmith's account will be found in Northampton County Records, Orders Nov. 7, 1645.

<sup>3</sup> This order was carried out in York, and no doubt, in all the other counties; see York County Records, vol. 1690-94, p. 141, Va. St. Libr. The original order is recorded in Minutes of Council,

While the roughest repairing was done by the ordinary blacksmith, there are indications that the Colony was not wanting in trained gunsmiths fully competent to do all the finer work. As England was too remote to make it practicable to send thither every musket, carbine, fowling piece, or pistol which the plantation blacksmith was unable to restore, there was a considerable field for gunsmiths who had served an apprenticeship at their trade either in Virginia or the Mother Country. The importance of having such men led the General Assembly to grant them unusual privileges; for instance, the menders of guns, whether expert gunsmiths or common blacksmiths, were almost the only mechanics in the Colony whose accounts, certainly in critical times, were guaranteed by the authorities. Upon their skill and celerity in an emergency, the community's very existence might turn; therefore, to pursue towards them a policy tending to discourage them in their calling was to court serious injury, if not absolute ruin, to the public interests. Whatever the blacksmith's position in the community, apart from his trade, may have been, there is evidence that some persons among the gunsmiths, whose trade demanded a higher grade of intelligence and expertness, were men of property and education. One of the most prominent citizens of Northampton in 1696 was Charles Parkes, who had followed this business for many years. That he was a man of a superior order was shown by the character of his collection of books: it contained not only fifteen works relating to the subject of Divinity,

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Jan'y 27, 1691-2, Colonial Entry Book, 1680-95. The smiths' accounts were returned to the General Assembly, and by that body proportioned among the counties.



but also eleven relating to the subject of History. Among the specific volumes were Speed's *Chronicle* and Drake's *Travels*.<sup>1</sup>

<sup>1</sup> Northampton County Records, vol. 1692-1707, p. 131. The gunsmith is generally referred to in the statutes as "armorer."

## CHAPTER V

### General Regulations : Drill and Discipline

WE have seen how the militia obtained their officers, arms, accoutrements, and ammunition.

How were they prepared for actual military service, and to what discipline were they subjected during the continuation of that service?

There were certain features of the plantation life of Virginia during the Seventeenth century which animated every youth of that period with some of the spirit of a soldier long before he was, for the first time, summoned to take part in the martial exercises of the muster field, or to accompany a military expedition to the frontiers. First of all, it was a life passed principally in the open air without regard to the season of the year. The biting cold of winter, the relaxing heat of summer, the drenching downpour of spring,—all these the young Virginian had, from his early boyhood, been accustomed to endure, and they had only served to harden his frame. His self-confidence and self-reliance had been strengthened by a brave defiance of all sorts of weather; now it was a snow-storm that obliterated all view of the landscape, near or remote; now an icy wind from the north roaring through the naked woods and blackening the fields with its withering breath; now a tempest of hail accompanied by violent thunder and lightning; now the torrid rays of an August sun flaming at the

zenith in a cloudless sky. Then too from the time he could shoulder a fowling piece he had been in the habit of using firearms; at an early age he not only acquired all the skill of a practised marksman,<sup>1</sup> but also learned all the craft of an accomplished woodsman. By his many tramps over hills and valleys in his keen search for wild game, a search often made in the darkness and loneliness of night,—he cultivated the ability to stand any amount of unusual fatigue. His pursuit of the hare, fox, and deer during the day, and of the coon and opossum after the evening star had risen, prepared his sinews for the weary marches in which at a later day he was to take part for the destruction of the savage foe. His foot, hand, and eye had, unconscious to himself, been trained to assist him in such a march many years before he was actually enlisted in the militia. Hunting the Indian required hardly more wariness and prudence, more patience and indifference to physical exertion than hunting the wild turkey or the wild goose. And finally the hardy Virginian boy had been in the habit of riding horses without any emotion of fear, however wild they might be in spirit; indeed, to break an untamed animal was an occupation that appealed irresistibly to his love of the dangerous and adventurous. A large part of his life was passed on horseback, and if, as soon as he reached the military age, he elected to become a member of a cavalry troop, he at once showed that he was as much at home in the saddle as the oldest and most daring of his comrades.

Hardened by constant exposure to every variety of trying weather; accustomed to endure every form of

<sup>1</sup> "Hunting and fowling, most of them are most excellent marksmen"; *Works of Captain John Smith*, vol. ii., p. 258, Richmond edition; see also Beverley's *History of Virginia*, p. 218.



physical fatigue in the open air in the pursuit of wild game; trained in the use of a gun so far as to become an almost unerring marksman; skilful in all those sports and crafts that make the foot surer, the hand steadier, and the eye more certain; and, finally, an accomplished horseman,—the Virginian youth, when the hour for military service arrived, took his place in the ranks of the militia with all those aptitudes already perfected which were of the first importance for a soldier destined to engage in warfare with such an enemy as the Indian. As soon as there was added a knowledge of the military drill taught in those times, a young militiaman was far less raw than would be a person of our own day in the same situation who had had no experience of actual battle. In 1676, Nathaniel Bacon declared that five hundred Virginians could defeat one thousand English regulars merely by their extraordinary skill in all the Indian arts of defence and attack; and this boast was substantially confirmed seventy-five years later by the terrible fate which overwhelmed the unhappy army of the obstinate and arrogant Braddock.<sup>1</sup>

From the foundation of the first settlement, the Colony's military arm was trained by regular military exercises; the soldiers who came over in the first expedition were, soon after they landed on Jamestown Island, required to go through the ordinary drill; and

<sup>1</sup> Bacon's Conversation with Goode, Colonial Entry Book, 1676-77, p. 232. Bacon declared that, should he be defeated, he would retreat to an island in the Roanoke River remote from the settlements. One hundred years later, that greater and more successful rebel, George Washington, said in the darkest and most critical hour of the Revolution, that, if no other resource were left him, he would retire into the mountain fastnesses of West Augusta and there continue the struggle.

this was afterwards constantly repeated. During the Presidency of Captain John Smith, the exercises were performed on a tract of level ground situated near the west bulwark and known, no doubt in his honor, as Smithfield; nor were these exercises confined to a drill; the opportunity was seized to improve the soldiers' marksmanship, especially with the larger guns. Smith would order a target to be placed against a tree at the edge of the neighboring forest, and at this the firing would be directed until the trunk, greatly to the amazement and admiration of the group of Indians, who were always looking on, was battered to pieces by the balls.<sup>1</sup>

As the plantations spread out more widely, all the inhabitants of each settlement subject to military duty were carefully exercised in arms on each recurring holy-day.<sup>2</sup> So important was this considered to be that, as early as 1629, a muster master-general was appointed to enforce a universal observance of these regulations; in the course of that year, Major George Donne, who had accompanied Harvey to Virginia, and who in the beginning, it seems, had served as marshal, was appointed the first incumbent of the position. He returned to England in 1631 in order to prosecute before the English authorities the Councillors most instrumental in deposing that Governor; but before twelve months had passed, he was in the Colony again, and in the full enjoyment of the two offices of Muster-General and Marshal, recently confirmed to him by the royal favor.<sup>3</sup> About 1641, Captain John West,

<sup>1</sup> *Works of Captain John Smith*, vol. i., pp. 152, 192, Richmond edition.

<sup>2</sup> *Ibid.*, vol. ii., p. 258, Richmond edition.

<sup>3</sup> *British Colonial Papers*, vol. vi., 1631-33, No. 25.

described as a "gentleman of noble quality," was nominated to the office through the influence Sir Francis Wyatt possessed in England. The Governor had no power to name the Muster-General, and Berkeley, in the instructions which he received when he first went out to Virginia, was expressly enjoined not to assume the right to make the appointment.<sup>1</sup> This officer was, in 1639, paid for the performance of his duties three pounds of tobacco for every tithable entered in the Colony's tax list. Captain West's salary, on the other hand, seems to have been fixed at the round sum of ten thousand pounds of tobacco.<sup>2</sup>

The immediate duty of seeing that the militia was properly drilled fell upon the commander of each district; and in the beginning, he probably took the principal part in putting each troop and company through the different branches of the manual.<sup>3</sup> Afterwards, the captains were, perhaps, the chief drill masters. In 1642, the commission of Francis Yeardley, of Accomac, as a newly appointed captain of militia, required him to exercise his company at least once a month; and he was also ordered to report the name of every person subject to military duty who failed to attend at the chosen time and place.<sup>4</sup> About ten years afterwards, a notice was issued by the commanding officer of Northampton to each subordinate officer appointed for a separate district, and to every enlisted soldier, whether of the foot or the cavalry, to attend a general muster to be held the following January on Argoll

<sup>1</sup> *Va. Mag. of Hist. and Biog.*, vol. viii., p. 389. Colonial Entry Book, 1606-1662, p. 228.

<sup>2</sup> Randolph MS., vol. iii., p. 230. See also the two authorities immediately preceding.

<sup>3</sup> Hening's *Statutes*, vol. i., p. 163.

<sup>4</sup> Accomac County Records, vol. 1640-45, p. 147, Va. St. Libr.



Yeadley's plantation as affording the most convenient and suitable spot for martial exercises. The officers were directed to bring with them their accoutrements in good shape, their arms fixed, and their ammunition in such quantity as to be in no danger of falling short.<sup>1</sup>

Should a militiaman, without sufficient excuse, fail to attend a muster, he was liable to the payment of a considerable fine; in Accomac, in 1664, thirteen persons were mulcted twenty pounds of tobacco apiece for neglecting to be present at a meeting of this kind held in the county in April, and twenty-two for disobeying the summons to be present at another held in August.<sup>2</sup> This form of delinquency prevailed to such an alarming degree at this time that the General Assembly increased the penalty to one hundred pounds of tobacco, and in doing so, declared that, in remaining away from the military exercises, the offenders were aiding in bringing about the "ruin of all military discipline."<sup>3</sup> With a view to diminishing the expense in attending these exercises, the county courts not infrequently required the ferrymen within their several jurisdictions to transport across a stream free of charge all troopers (together with their horses) who were either on their way to be present at a muster, or were returning from one; and this exemption extended to three days, namely, the day preceding the meeting, the day on which it was actually held, and the day succeeding.<sup>4</sup>

The Easter, Whitsuntide, and Christmas holidays, should the state of the weather permit, were, in 1674, proclaimed as the dates on which the muster was to

<sup>1</sup> Northampton County Records, vol. 1651-54, p. 80.

<sup>2</sup> Accomac County Records, vol. 1663-66, folio p. 87.

<sup>3</sup> Randolph MS., vol. iii., p. 290-1; Henning's *Statutes*, vol. ii., p. 246.

<sup>4</sup> Henricc County Records, vol. 1688-97, p. 18, Va. St. Libr.

take place.<sup>1</sup> Ten years later, it was provided by an Act of Assembly that the colonel of every regiment should summon the soldiers under his command to meet for military exercises at some convenient place regularly on the first Thursday in October, and as often afterwards as seemed to be advisable. In the intervals, however, every captain of horse or foot was required to drill his troop or company at least once in the course of every three months.<sup>2</sup> As it was soon found that the appointment of the same date for the general muster in all the counties occasioned inconvenience, each county was directed to name a different day for its own annual military exercises.<sup>3</sup> The same regulation was in force at the end of the century; once a year, a general muster of the militia was held in each county, whilst a special muster for each troop or company was held at least four times during the same interval.<sup>4</sup>

There is no reason to think that the drill enforced at these musters was less thorough than the one which, at this time, was enforced in England in the same branch of the military service. The character of the respective exercises was, no doubt, substantially alike. During the century, there were so many citizens of Virginia who had left the Mother Country long after they had reached manhood that some among those residing in each county must have learned the manual of these exercises by acting as petty officers before they emigrated. But even if the men who had enjoyed such a practical experience were comparatively few in number, the principal officers of the Virginian militia were of sufficient

<sup>1</sup> General Court Records, vol. 1670-76, p. 197.

<sup>2</sup> Hening's *Statutes*, vol. iii., p. 14.

<sup>3</sup> Colonial Entry Book, vol. 1680-95, p. 208.

<sup>4</sup> Beverley's *History of Virginia*, p. 218.

intelligence to acquire by study a full knowledge of every detail of the English system of drill.

This drill, however, was not under all circumstances as useful to the colonial soldier of that day as to the European. Accustomed to the formal warfare of the Old World, the British regulars sent to America during the great struggle for the possession of Canada in the next century were inclined to condemn and deride the colonial militia for their supposed timidity; but conduct so arrogantly denounced as cowardice was really a wary irregularity of movement which a long course of fighting with the Indians had made almost traditional with the American militiaman. It was from behind stone walls that the first blood of the Revolution was drawn on the highway leading from Concord and Lexington to Boston; and it was from behind trees and boulders that the most memorable battle in the South, that of King's Mountain was won. These very men did not shrink from facing the enemy openly in an hundred other battles and skirmishes, but the lessons learned either by themselves or their fathers in combats with the Indian foe had taught them the wisdom of using every inch of shelter should there be any available.

This was the spirit of the Virginian militiamen during the Seventeenth century, and as nearly all their wars were with the savages, they had little room for the display of that military precision which it is one of the first objects of the military drill to inculcate. The first movement of a company set upon in the forest by the Indians (and it was only in the forest that the Indians generally made an attack at all), was to scatter in order to shield their persons with boulders and the trunks of trees; each soldier acted separately, and relied in chief measure on himself alone



for the destruction of the savage directly opposed to him. Such a battle would often last for many hours, and be terminated not even by the fall of night.<sup>1</sup> Not until the enemy had been finally compelled to retire would the troops again resume something of the order and regularity of a trained force on the march. No doubt, in the muster exercises, the peculiarities of this warfare, in which the militia were certain to be employed, were constantly borne in mind by the officers, and the drill, so far as possible, adapted to its extraordinary features.

Under no circumstances, however, was it more imperative to enforce strict military discipline than during such warfare if the designs of the most patient, alert, and cunning of all foes were to be disconcerted. The military code formulated by the General Assembly in 1675-6 seems to have been, in some of its sections, as severe as the martial laws of Dale. A case of drunkenness repeated three times was punished by forcing the guilty soldier to ride the wooden horse, a very uncomfortable and ignominious seat; and when found intoxicated at his post, he was liable to the penalty of death. Should he, whether drunk or sober, lift his hand against an officer, he was to suffer the loss of that member; and if it was a weapon and not his hand which he had raised, then he was to be shot by a file of his own troop or company. The same extreme sentence was to be imposed whenever such a menace ended with a blow that did personal harm to the officer; and he was also to undergo the like penalty should he attempt to rescue a comrade from the punishment about to be inflicted for some offence. If the soldier

<sup>1</sup> One of the most typical of these battles was that of Point Pleasant, which was fought chiefly in this manner.

happened to be absent when the watch was set, he was compelled to bestride the wooden horse and to remain there for several hours; and he was also punished severely should he, while marching, make such a noise as to prevent the word of command from being promptly and generally heard. The penalty was death should he allow himself to fall asleep while performing a sentinel's duties, or should he show cowardice by deserting his colors, or treachery by giving intelligence to the enemy.

As warfare in the Colony was generally attended with extraordinary hardships and deprivations, owing to the length of the march through the forest wilderness, the regulations to prevent the expression of discontent for any cause were peculiarly strict. Should the soldier, for instance, show dissatisfaction with his imperfect shelter from the weather while stationed in camp, or should he criticise the quality of the provisions served to him in the same situation, he was to be arrested and treated as a mutineer. Equally severe was the punishment which he brought upon himself, should he venture to sell, pawn, or embezzle his guns and ammunition, or in the same illicit manner to dispose of his sword, axes, and spades.<sup>1</sup>

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 333.

## CHAPTER VI

### Indian Wars: Popular Apprehension

THERE were three great military events which might occur at any time to bring about a serious disturbance of the peace of the Colony: these were, first, an Indian incursion; secondly, an attack from the sea by a foreign enemy; and thirdly, internal rebellion. It was to ensure the community protection against the indescribable calamities likely to accompany any one of these events that so many measures were, from decade to decade, adopted to keep the militia on a footing of efficiency; that they were organized in a thoroughly martial manner; that they were drilled with such constant regularity; and that they were compelled to submit to the strictest military regulations during the time they were stationed in camp, or engaged on the march.

Of the three great events which aroused the people's apprehensions in the highest degree, perhaps the one most dreaded, although it was the one taking place most frequently, was the Indian incursion. From the foundation of the earliest settlement to the last hour of the Seventeenth century, the gleam of the Indian tomahawk, the flash of the Indian scalping knife, and the red flame of the Indian torch, were ever casting a shadow across the hearts of some section of the people of the Colony. There was always a frontier, and the



inhabitants of the frontier were always in danger. Throughout this long period, there passed but one brief span of years in which the fears of all the settlers were quieted, and from this state of delusive confidence, they were awakened by the shock of one of the most terrible butcheries recorded in American history. The massacre of 1622, in which so great a proportion of Virginia's population perished, was all the more appalling because it fell with entire unexpectedness; from that hour, the colonists lost all faith in the peaceful disposition of their Indian neighbors unless they had been reduced to numerical insignificance, or were overawed by a constant show of force. The massacre of 1644, which fell chiefly on the outlying plantations, only confirmed this feeling of suspicion and apprehension.

The distrust which sprang up after 1622, and which never really died out, found expression in many ways. Among the instructions given to Governor Yeardley in 1626 was one requiring him to prevent every householder from admitting an Indian to his residence; and also to allow no settler to converse, play, or even trade with the savages unless he had procured a special license to do so.<sup>1</sup> The lapse of time did not, in the colonists' minds, diminish the necessity for such extraordinary prudence. Twelve years after the massacre of 1622 occurred, Governor Harvey, in a letter to the Privy Council, stated that, although the neighboring tribes were, at that time, on "fair terms" with the planters, yet they were always to be doubted; and that the precautions taken for resisting an outbreak could never be relaxed, as it might come at any hour.<sup>2</sup> And when the outbreak did come, the strain of the

<sup>1</sup> Instructions to Yeardley, Robinson Transcripts, p. 47.

<sup>2</sup> British Colonial Papers, vol. viii., 1634-5, No. 3.

previous apprehension made the manner of punishing the savages all the more sweeping and relentless. As soon as war was declared, it was necessary for the colonists to carry hostilities (to quote Colonel Scarborough's words in 1659) "into the heart of the enemy's country, so that they might neither plant corn, hunt, nor fish."<sup>1</sup> It was only when they were decimated by the sword, driven to the remote backwoods, or reduced to starvation, that the thirst of such a foe for the blood of the English could, it was supposed, be repressed even for a time.

Even when the tribes on the frontier had been harried into submissiveness, the danger of an attack by the savages living far beyond the borders of Virginia rose, like the phantom of a fevered brain, to disturb the quietude of the colonists. In a letter addressed by Nicholas Spencer, in 1683, to Jenkins, the English Secretary-of-State, he urged that the conquered Indians occupying the county adjacent to the outlying plantations should be systematically conciliated, as they formed, so long as their goodwill was retained, a barrier against the incursions of the more distant tribes of the North and West.<sup>2</sup> The importance of the part which they could play in this character was so clearly understood at this time that it had become the General Assembly's settled policy to combine several of these so-called friendly tribes, and to supply them with arms and ammunition so as to enable them to beat back, or at least to check, any band of warriors who might attempt to steal across the frontiers to attack the white settlements, annually spreading further and further

<sup>1</sup> Letter to Governor Fendall of Maryland, Aug. 28, 1659, Robinson Transcripts, p. 268.

<sup>2</sup> British Colonial Papers, vol. lii., No. 64.

westward. They served as outposts upon the borders. When, in 1690, it was reported far and wide that the Five Nations, the most powerful Indian Confederacy of those times, were about to descend through the trackless forests, and, by force of their extraordinary numbers, thrust themselves into the very heart of the Colony, interpreters were at once sent to the submissive tribes residing in the outlying country to instruct them that, should the emissaries of the terrible Iroquois approach them for the purpose of obtaining their aid in the proposed incursion, they must announce that they were under the Virginian Government's protection, and promptly inform that Government of the enemy's designs.<sup>1</sup>

Several of the greatest commotions occurring in the Colony in consequence of this fear of an Indian invasion were caused by the friendly tribes themselves, when, as it turned out, there was no reason for creating an alarm. The whole county of Stafford, was, in 1691, thrown into a state of great agitation by a report spread among the people by these allies, that a band of savage warriors, belonging to remote nations, were on their way to attack them. So extraordinary was the disturbance produced by such reports, and so often were they proven to be baseless, that the county court of York, the same year, passed an order that, whenever an Indian brought news of the approach of a hostile force of his own race, he was to be held until it could be shown whether or not he had any real ground for making such an announcement; and if it was disclosed that he was merely spreading an idle rumor, he was to be severely punished.<sup>2</sup> A few months later, an

<sup>1</sup> Colonial Entry Book, 1680-95, p. 358.

<sup>2</sup> York County Records, vol. 1690-94, p. 142, Va. St. Libr.



Indian, who appeared in New Kent, declared in public at many places that a strange nation towards the West were preparing to fall upon the Colony and destroy all its inhabitants. Information of his alarming words coming to the ears of the justices of the county, they sent the sheriff to arrest him, and by this officer, and accompanied by an interpreter, he was conveyed to Jamestown in order to recite his story to the Governor.<sup>1</sup>

But perhaps the most remarkable proof of the constancy and depth of the apprehension of Indian invasion prevailing in the popular mind long after the neighboring tribes had been reduced to submission was the fact that, for some years, it was the Virginian authorities' habit to despatch a special messenger to New York and New England to obtain the latest information as to the movements of the French and Northern Indians, who were known to be acting in concert; such information, it was declared, would enable the Government of Virginia to adopt defensive measures at once whenever there was the slightest danger of an early attack from that remote quarter.<sup>2</sup> As the friendly tribes might at any time be seduced by emissaries of this powerful combination, even they were regarded with suspicion; those planters who resided nearest to them were required to keep a vigilant eye on their conduct; and should there be any reason to doubt their goodwill, it was to be promptly reported to the county justices with a view to an immediate investigation. In 1699, the Emperor of Piscataway's actions having given rise to some uneasiness in Henrico, in order to find out whether this feeling was justified

<sup>1</sup> Minutes of Council, Aug. 16, 1692, B. T. Va., 1692, No. 123.

<sup>2</sup> Minutes of Assembly, April 13, 1692, Colonial Entry Book, 1682-95. John Perry served as the Colony's agent in 1692.

or not, the testimony of many prominent citizens who had had opportunities of observing this King and his tribe, was taken, with the result that they were not molested.<sup>1</sup>

It was a very natural impulse which led the colonists to look upon an Indian incursion with extraordinary horror; for in all recorded history there has perhaps never been a foe who carried on hostilities in a spirit of greater ferocity than the American savage of this period. The atrocities committed by him were committed in a manner so original and so peculiar as to impart, if possible, a more aggravated cruelty to them; it was not merely that he slew his enemy, however innocent or helpless, in the spirit of an inhuman ogre, but the prolonged tortures, suggested by a demoniacal ingenuity, which he loved to inflict, and the glee with which he gloated over his victim's agony,—all gave to a war with his race the very blackest aspect assumable by war. It was a war in which no mercy was asked or granted; a war softened by no touch of amenity, even at long intervals; a war in which women and children ran the same risk of destruction as the fighting man, and in a manner equally revolting and pitiless. There was many a tree on the frontiers stained with the blood of a white infant whose brains had been dashed out against the trunk;

<sup>1</sup> Henrico County Records, Orders April 1, 1699. According to Governor Andros, the Indians surviving in Virginia were, in 1697, composed of the following number of nations and bowmen: on the Eastern Shore, nine small nations, having about one hundred bowmen; south of James River, four, having one hundred and sixty bowmen; on the York River, three, having fifty bowmen; on the Rappahannock, two, having forty bowmen; on the Potomac, one, having twelve bowmen; B. T. Va., 1697, vol. vi., p. 75. These different remnants of the Powhatan Confederacy paid an annual tribute in the form of beaver and deer skins; see B. T. Va., 1699, vol. vii., p. 243.

and there was many a wigwam adorned with scalps whose faded tresses swept the floor. It was the recollection of such facts as these that filled the hearts of so many of the colonists with anguish and bitterness, and made them hunt down the Indians as the most ferocious of all the wild beasts roaming the primæval forests.

The feeling of horror was made more intense by the noiselessness with which the enemy moved, the care with which they hid their tracks, the suddenness with which they appeared at unexpected points. The wildness of the Indian's physical aspect also added to this horror,—his naked and painted skin; his sinewy frame, as lithe and active as that of a panther or wild cat; his hawk-like eye; his scream of triumph, which curdled the blood far more than the cry of some fierce wild animal at midnight. The very image of the terrible creature stamped itself upon the imagination like some menacing figure conjured up from the region of devils. Well might the mother clasp her child to her bosom when the news came that such an enemy as this had been seen upon the frontier, and well might the father's cheek grow pale as he took down his gun from the wall. Among the most ordinary subjects of conversation by the fireside of many a home in the long winter nights were the fearful incidents which had occurred during previous Indian wars as illustrating the fierceness, the treachery, or the cunning of the savage, until he came to be regarded as the very consummation of all that the world had to offer of cruelty the most atrocious, and of blood thirstiness the most appalling and unquenchable.



## CHAPTER VII

### Indian Wars: Marches

IT can be well understood that this constant feeling of apprehension,—this profound sense of the unspeakable ferocity of the Indian's instincts,—would have led the colonists, from time to time, to adopt the most active measures to protect themselves from attack. From a very early date in their history, the special expedition, or march as it was known at that period, was looked upon as the most effective means of breaking the power of the Indian tribes. After the massacre of 1622, a carefully organized and determined attempt was made to wipe from the face of the earth the savages occupying the villages in the neighborhood of the different white settlements. The troops, however, were not sent out until the following summer, as it was hoped that, by cutting down the corn at a late stage in its growth, all those Indians who did not fall before the gun would perish by starvation. Beyond the destruction of the crops, there seems to have been but small success to report, as the savages were too light and swift to be overtaken by soldiers heavily encumbered in their movements by their armor. The English, in their disappointment, described the Indian's elusive tactics as a subterfuge of cowardice; but they were soon to learn that the only way to break the force of these tactics was to meet Indian wiles with wiles

equally subtle and cunning.<sup>1</sup> The officers assigned to command of the several detachments sent out to exterminate the savages in 1622 were Captains William Pierce, William Tucker, and Samuel Mathews; the first led the expedition against the Chickahominies, the second against the Nansemonds and Warrosquoicks, and the third against the Wyanokes. A short time after these expeditions returned, Captain Tucker led a second one against the Nansemonds, and Captain Isaac Madison one against the great Wyanokes.<sup>2</sup>

Governor Wyatt, writing to the Privy Council in 1626, declared that the Indians could not be finally suppressed until five hundred English regulars were sent out to the Colony annually for a period of several years fully provided with victual, apparel, tools, arms, and munition. But it is very doubtful whether such troops would have proved so valuable for that purpose as men who, by having resided for a long time in Virginia, had become accustomed to the peculiarities of such warfare.<sup>3</sup> Wyatt's suggestion received no encouragement, and the expeditionary forces continued to be composed of the militia. The year after he wrote to the Privy Council, several detachments, starting in different

<sup>1</sup> *Works of Captain John Smith*, vol. ii., p. 84, Richmond edition. Smith said of the Indians: "They have much advantage over us though they be cowards." More than a century later, the officers of Braddock's army were only too quick to charge the Provincials with the same quality because the latter wished to adopt the Indian manner of warfare as they approached Fort Duquesne. Had their advice been followed, the battle would not have ended in disaster.

<sup>2</sup> Randolph MS., vol. iii., p. 173.

<sup>3</sup> British Colonial Papers, vol. iv., 1626-7, No. 9. In 1678, Culpeper recommended that three companies of regulars should always be kept in Virginia to resist Indian invasion; Colonial Entry Book, 1676-81, p. 258.

directions, fell upon all the Indian towns on the same day, and at a season when the corn, having been once destroyed, could not be replaced by a second planting. The troops engaged in this march were drawn from every part of the Colony, but their enlistment for the purpose seems to have been purely voluntary. Captain Samuel Mathews was assigned to the command of the expedition against the seat of the Pamunkeys, the most important tribe at this time to be found in Virginia.<sup>1</sup> So great was the alarm caused two years later by the Indians' presence that the country was divided into four districts, the inhabitants of each of which were annually required to set on foot an expedition against the savages in March, July, and November respectively.<sup>2</sup>

The allowances embraced in the public levy for 1629 show that, not only food and ammunition, but also spirits were provided for the soldiers in these early marches. Among the different military expenses covered by this levy was sometimes included the cost of a barrel of wine. To meet these expenses, it was found necessary to impose a special tax of five pounds of tobacco upon every tithable listed in the Colony.<sup>3</sup> Some years afterwards, certain citizens of Lower Norfolk were required to pay for the buff coats which Cornelius Lloyd had furnished for the soldiers employed in a recent march against the Nanticokes; the outlay for each coat was borne by the persons compelled by law to send out the soldier who had worn it, and these persons were ordered by the county court to deliver to Captain John Sibsey at his house two hundred and fifty pounds of tobacco, the price fixed

<sup>1</sup> Robinson Transcripts, pp. 66, 70.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 140; Randolph MS., vol. iii., p. 213.

<sup>3</sup> Hening's *Statutes*, vol. i., p. 143.



for each coat.<sup>1</sup> At a later date still, twenty persons in the same county were held liable for biscuit supplied to the soldier equipped by them for an Indian campaign.<sup>2</sup> In these last cases, it is probable that all the troops taking part in the march had been raised in Lower Norfolk alone.

✓ In 1631, the General Assembly having proclaimed the Indians to be the colonists' "irreconcilable enemies," ordered the military commander of every district to fall upon the tribe seated nearest him on the smallest provocation.<sup>3</sup> About thirteen years afterwards, a march, in which many soldiers participated, was made against the towns of the Pamunkeys and Chickahominyes. It was attended by such an unusual number of casualties that public steps had to be taken to assure relief for the persons so entirely disabled by their wounds and sufferings that they had lost the power of earning their own subsistence:—each county was required to provide for all its own soldiers left in this helpless condition; and also to remunerate any one who had furnished them in the march with medical service, or had supplied them with food for consumption, or boats for transportation.<sup>4</sup> The charges entailed by this expedition were extraordinarily heavy; and in order to raise the fund necessary to meet them, a special tax of six pounds of tobacco was imposed upon every

<sup>1</sup> Lower Norfolk County Records, Orders March 2, 1639.

<sup>2</sup> *Ibid.*, Orders April 12, 1641.

<sup>3</sup> Randolph MS., vol. iii., p. 218.

<sup>4</sup> Henning's *Statutes*, vol. i., pp. 285, 287, 311. Pensions were granted by special Acts of the General Assembly. In 1680, for instance, William Chapman, of Gloucester county, was the beneficiary of such an Act allowing him a thousand pounds of tobacco per annum "during his impotency and lameness got in the service of the country"; Orders of Assembly for 1680, B. T. Va.

tithable person residing in James City, York, Warwick, Elizabeth City, Northampton, Lower Norfolk, and Isle of Wight, the counties which were most exposed to attack.<sup>1</sup>

In February, 1644-5, the Assembly having decided to send out a strong expedition against the neighboring Indians, a general law was passed requiring every fifteen tithables residing on the northern side of James River to furnish and maintain one soldier chosen from among themselves; and should they fail to make a selection, the military authorities were to impress any one of the fifteen they saw fit. This soldier's wages were to be paid by the remaining fourteen; provisions also were to be supplied him at their cost; and should he, during the progress of the campaign, be wounded, they were to bear the expense of the medical services necessary to his cure.<sup>2</sup>

Groups of counties now united to form a military association subject to the supervision of a council of war<sup>3</sup>; and these counties undertook to send out special expeditions on separate marches against the savages. In 1645, the year following the one made memorable by the second great massacre, Isle of Wight and Upper and Lower Norfolk together equipped a company of eighty picked men, who proceeded as far southward into the heart of the enemy's country as the remote valley of the Roanoke. The expenses of this march, passed upon and allowed by the council of war appointed for these three associated counties, amounted to about thirty-eight thousand pounds of tobacco, a very large

<sup>1</sup> Hening's *Statutes*, vol. i., p. 287.

<sup>2</sup> *Ibid.*, vol. i., p. 292.

<sup>3</sup> The plan of groups of counties associating themselves for military purposes was adopted from England.

sum in these early times. Among the items of the account were charges for the hire of boats, for the purchase of provisions, powder, and shot, and for the payment of the surgeons' salaries. The soldiers' wages alone were estimated at eight thousand pounds of tobacco. Those among them who suffered casualties also received a special compensation; for instance, one bitten by a venomous snake was allowed eight hundred pounds. In order to raise the fund to meet all these expenses, a tax of twenty-eight pounds of the same commodity was imposed on each tithable residing in Lower Norfolk, and thirty-one on each residing in Isle of Wight and Upper Norfolk. The assessment was heavier in the latter two counties because their contingent had consumed a larger quantity of the victual provided for the march. The council of war was composed of the eight citizens of the three who had had most experience of military affairs.<sup>1</sup> Such was the character of all the men forming the council of war for each group of associated counties; and, in an emergency, they were impowered to call together as large a body of militia, and to impress as great a quantity of ammunition and arms, as they considered necessary for the protection of the plantations within the bounds of their respective districts.<sup>2</sup>

In the following year (1646), there was another

<sup>1</sup> Lower Norfolk County Records, Orders Oct. 15, 1645. The members of the council of war for Lower Norfolk, Isle of Wight and Upper Norfolk were Capts. Thomas Willoughby, John Sibsey, Edward Wyndham, Thomas Dewes, Richard Bennett, Richard Preston, Anthony Jones, and Francis Hough. The surgeons of the expedition were Thomas Ward and Christopher Atherley; see Lower Norfolk County Orders Nov. 3, 1645.

<sup>2</sup> The Council of war included *ex officio* the commanders and deputy-commanders of the associated counties; see Hening's *Statutes*, vol. i., p. 292.



important march made against the Indians; and in order to obtain the necessary number of troops, it was provided by law that the counties lying on the north side of James River should raise at least sixty men, who, under Lieutenant Francis Poythress' command, were to repair to the rendezvous appointed at Kikotan. Cornelius Lloyd and Anthony Elliott contracted to supply the soldiers volunteering for this expedition, with twenty-five hundred and twenty pounds of beef and pork, salted and packed in barrels; the same number of pounds of bread and sifted meal; or as a substitute, forty bushels of peas stored in casks for transportation. The compensation they were to receive was fixed at fifteen thousand pounds of tobacco, to be paid by a public assessment. Captain Henry Fleet, in return for the same amount of tobacco, offered to furnish boats, with men to manage them, victuals, nails, axes, hoes, spades, three hundred pounds of powder and twelve hundred pounds of shot or bullets.<sup>1</sup>

The plan adopted in York to save the soldiers engaged in this march from the loss which would have resulted to them had their crops, during their absence, been left unworked and unprotected, was perhaps the one followed in most of the counties at this time:—the lieutenant and deputy lieutenant were required by court to see that a certain number of persons were designated to attend to these crops, and that a list of their names was promptly given to the constable, with instructions to inform them of the task imposed on them. Should anyone among them neglect to comply, he was, for every day he absented himself from the field, to forfeit one hundred pounds of tobacco, to be

<sup>1</sup> Henning's *Statutes*, vol. i., p. 319.

paid to the soldier whose corn and tobacco he had been assigned to look after.<sup>1</sup>

The Indians having, in 1654, committed serious depredations in the valley of the Rappahannock River, the Assembly formed the counties of Lancaster, Northumberland, and Westmoreland into an association, subject in all military matters to a council of war acting with the assistance of the justices embraced in each county's commission. By their order, Lancaster furnished one hundred men; Northumberland, forty; and Westmoreland thirty; and this entire force was placed under Colonel John Carter's immediate command, who was instructed to lead his troops against the nearest Indian towns and demand satisfaction for the robberies and murders perpetrated by their inhabitants. Whilst the little army was to repel vigorously all assaults which the savages might make on it during its march, yet it was to be careful not to begin an attack. Not until Colonel Carter had reported to the Governor and Council the manner in which the expedition had been received in the Indian country was a decision to

<sup>1</sup> York County Records, vol. 1638-48, p. 121, Va. St. Libr. In Lower Norfolk, the penalty seems to have been 40 lbs. a day; see Orders Aug. 15, 1645. The persons designated were, no doubt, in every instance, the fourteen tithables responsible for the military equipment of the person whose crops were to be worked; see Lower Norfolk County Records, Orders Aug. 15, 1645, where we find the following: "Whereas John Cole was by Capt. Edward Wyndham appointed to be of that number which should set forth George Rutland the southland march, and is since departed the parish, by which means the said Rutland is damnified in his crop for want of 2½ days work which should have been paid by said Cole, there being none appointed by him to pay it before his departure. It is therefore ordered, according to the order of the last council of War, that Rutland shall be satisfied 40 lbs. of tobo. per day in satisfaction of his said work, which amount to the full quantity of 100 lbs. of tobo. out of the said Cole's estate."

be reached as to whether open war should be declared.<sup>1</sup> It would seem that the towns were overawed by the strength of this force, and no hostilities broke out.

Ten years afterwards, several murders occurred on that part of the Northern Neck's frontier lying towards the upper waters of the Rappahannock; these were committed by the neighboring Indians, who, however, were supposed to have been instigated by the powerful tribes seated further north; and it was even suspected that these tribes had a direct hand in it themselves. It shows how radical were the measures deemed justifiable under circumstances like these that Berkeley, so soon as he was informed of what had taken place, wrote to Major-General Smith that it was necessary to exterminate every member of these tribes except the women and children, who might be spared in order, by their sale as slaves, to defray the expenses of the campaign. He thought such a merciless course necessary to serve as a warning to all other Indians; and he declared that, if there were not sufficient troops in the Northern Neck to go upon so important a march, a large number of young men residing in the other counties held themselves in readiness to join it without expectation of any other reward than "a share in the booty."<sup>2</sup> When hostilities began, it was left to the Governor to name the officers, and to determine the number of soldiers to be employed in it.<sup>3</sup>

<sup>1</sup> Randolph MS., vol. iii., p. 258. This march took place, since allowances were made in the levy of 1655 for some of its expenses, such as the cost of the provisions, and the like; see Lancaster County Records, vol. 1652-56, p. 233.

<sup>2</sup> Rappahannock County Records, vol. 1663-68, p. 23, Va. St. Libr.

<sup>3</sup> Robinson Transcripts, p. 117. The following extract from the Lower Norfolk County Records (vol. 1666-75, p. 24<sup>2</sup>) shows how



Perhaps the most serious Indian incursions during the Seventeenth century were those which had so powerful an influence in bringing on the Insurrection of 1676. The military steps taken to resist these incursions show how quickly and effectively the Colony at this time could, under the right inspiration, collect its strength to repel an attack of the savages, however wide the territory in which the blow might be struck. As soon as news of the ravages and butcheries arrived, the General Assembly provided for a general levy of one thousand men, of whom one hundred and seventy-five were to form a troop of dragoons. Each county was required to raise a quota in proportion to the number of its tithables. It had also to pay the wages of each of its soldiers; to furnish him with two pounds of powder and six of shot; to equip him with arms ready for immediate use; and to supply him with a sufficient amount of biscuit, dried beef, bacon and cheese, to last, at the rate of one pound of biscuit and a half pound of beef, bacon, and cheese per diem, for a period of at least two months, the probable duration of the campaign. For

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victual was provided for the soldiers about to set out on a march:  
To John Hatton

Provision for the Western Branch Company	700 lbs.
" Mr Willoughby	
Provision etc for ye soldiers . . . . .	3886 "
" Mr Fulcher	
Provisions for ye soldiers . . . . .	1000 "
" Mr Carver ditto . . . . .	1775 "
" Mr Sayer	
Expenses upon ye soldiers . . . . .	1547 "
" Mr Thorogood	
Expenses upon ye soldiers . . . . .	1050 "
" Mr Lear ditto . . . . .	400 "
" Clerk of ye Militia . . . . .	600 "
	<hr/>
	10,958 "

every twenty-four men sent out by a county, two strong and matured oxen and one horse in sound condition were also to be dispatched. If the campaign had not been completed twenty days before the expiration of the two months first arranged for, each county was to renew all its original provisions for the extension of the war over two additional months,—new soldiers were to be levied and new supplies collected. The commander of each important division of the forces was authorized to impress two physicians to attend to the medical wants of his troops. All soldiers who might be maimed for life were assured of a public pension.

The small army formed under the terms of this admirable law was divided into two corps, one of which was designed to operate against the Southern Indians, the other against the Northern. As both bodies were, as time went on, certain to be greatly depleted by various casualties, an order was issued that all deficiencies, whether in men, arms, ammunition, victual, horses, oxen and the like, should be made good by impressment, but only after the proper warrant had been addressed to the chief commander of the militia, or justices of the county in which the impressment was sought to be enforced. It was, perhaps, the most remarkable feature of this law that the soldiers furnished by each county were impowered to choose their own officers, although, when once selected, these had to apply to the Governor for their commissions. This is one of the earliest of the popular measures which Bacon aimed to introduce for the destruction of those autocratic and oligarchic influences created by Berkeley and the Long Assembly in every department of the Colony's administration. If a company or troop was composed of sixty men, they elected a captain, lieu-

tenant or ensign, two sergeants, and two corporals; but if it was composed of only forty men, they could elect only an ensign or lieutenant, a sergeant and corporal; and these were all the officers they could elect when the company or troop did not exceed thirty in number.<sup>1</sup>

The promptness with which the different counties undertook to carry out this measure revealed not only the urgency of the impending danger, but also the existence of a general feeling that its several provisions, if energetically enforced, were sufficient to ward off that danger. Northumberland was one of the first to act. The quota which it was required to furnish was forty-nine men. The justices, in issuing the mandate for immediate enlistment, directed the commander of the county to draw the footmen in even proportions from the five companies of infantry, and the troopers in the same proportions from the two companies of cavalry. Altogether, Northumberland contributed six troopers and forty-three footmen. But before they were dispatched, they were ordered to assemble on the Fairfield race course. Having met, every soldier who was able to offer an acceptable volunteer in his place was released from duty. The different articles needed on the march were supplied by wealthy citizens; for instance, Captain Howson furnished the pack-saddles, Major Brereton the meat, Mr. Philip Morgan and Mr. Thomas Hobson the bread, while the horses required for the transportation of these provisions and the baggage were obtained by impressment from the two parishes embraced in the county. The detachment was accompanied by a number of Indians, employed, no doubt, to serve as scouts, for which their wariness,

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 341.



knowledge of the woods, and silent movements especially fitted them.<sup>1</sup>

Middlesex was not less prompt than Northumberland in carrying out the provisions of the same law; there like steps were taken to assure the troops, during the approaching campaign, a sufficient quantity of food. Major Robert Beverley seems to have furnished the bread and bacon; the one at the rate of two shillings, and the other at the rate of five pounds of tobacco a pound. A few weeks later, the justices issued an order that the head of every family residing in the county should, for the use of the soldiers, supply biscuit in the proportion of three pounds for every tithable person attached to his house or plantation; this biscuit was in part to be made of flour; and it was to be brought to the courthouse on a specified date. The following January, the justices designated five citizens who together were to contribute two hundred and fifty pounds of biscuit for delivery at Richard Robinson's home on the twenty-ninth day of the month. Christopher Robinson, who was required to supply a portion of this biscuit, was also directed to furnish six barrels of corn. How heavy were the charges imposed upon each county by its participation in this great expedition against the Indians was shown by Middlesex's outlay on this ac-

<sup>1</sup> Northumberland County Records, Orders July 4, 1676. The following shows the wages of the soldiers furnished by this county:

Captain Andrew Morton 2½ months . . . . .	1400 lbs.
Lieut John Browne 2½ months . . . . .	933 "
Sergeant John Phillips 2½ months . . . . .	583 "
Sergeant John Trope 2½ months . . . . .	583 "
John Payne, Drummer 2½ months . . . . .	350 "
Forty four soldiers @ 125 lbs. per month for each man for two months . . . . .	12,848 "
Orders Sept. 20, 1676 . . . . .	16,697 "

count:—the total amount which the taxpayers of that county had to pay was estimated at nearly thirty thousand pounds of tobacco; this sum included the cost of all the arms, ammunition, victual and horses; and it also included the expenses of hiring sloops, rewarding special messengers, and paying the soldiers' wages.<sup>1</sup>

In spite of the energetic measures adopted in 1676 to subdue the Indian tribes, there was only too much ground for the rumour which spread through the Colony about two years afterwards, that bands of marauding savages had been seen at the heads of the principal rivers. As soon as the news of this fact reached the Governor's ears, he ordered the troops at this time stationed in Charles City and Henrico to keep their arms and horses in good condition and to be ready at a moment's notice for active service. The justices of each of the two counties were directed to hold a session of their court at once in order to take immediate steps to provide the quantity of portable victual that would be needed; and this victual was to be forwarded for the soldiers' use as the demand for it should arise. In addition to the troops already prepared to march to the frontier, a certain number of the militia belonging to either county was to be called out. The general supervision of all the arrangements was assigned to Major Abraham Wood, an officer who had enjoyed an extensive experience in military affairs; and all persons were warned to obey whatever command he should give. The extra expense of this march was to be defrayed by a special tax.<sup>2</sup>

<sup>1</sup> Middlesex County Records, vol. 1673-80, p. 57; Orders Oct. 2, 1677.

<sup>2</sup> The troops already under arms in Henrico and Charles City counties were referred to by the Governor as "His Majesty's soldiers."

Under the influence of a similar danger, a little band of twenty picked men was furnished by Northumberland for an expedition sent out the same year.<sup>1</sup> The manner in which the soldiers of this county were, in 1679, provided with arms and victual for a march was perhaps not peculiar to Northumberland on such an occasion:—the justices having made up a complete list of all the tithables residing within its limits, the whole number was divided into sets of forties, and each set ordered to contribute one able man, with a horse; to furnish him with a carbine, sword, and pistols; and to supply him with eighty pounds of dried pork or bacon, or with one hundred pounds of dried beef, two bushels of meal, and five of Indian corn.<sup>2</sup> Middlesex raised thirteen troopers for this march. In this county, each horse was furnished by a different person, who also in some cases furnished the saddle and bridle, and in other cases, the pistols and holsters. Sometimes one person would provide the horse and another person the saddle; or one the horse, another the saddle; and still another the pistols. The swords and carbines were supplied by the county. The whole expense imposed on Middlesex alone by this expedition was estimated at fifty-six thousand pounds of tobacco, and as the price of a pound of tobacco at this time did not, on the average, range lower than a penny and a half, this signified a cost approximating six thousand dollars

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It is probable from this expression that it was the intention to use the regulars sent out to Virginia to suppress the Insurrection of 1676; see Henrico County Records, Minute Book 1682-1701, p. 26, Va. St. Libr.

<sup>1</sup> Northumberland County Records, Oct. 22, 1679. There was an allowance in the levy to meet the expenses of these troops, such as the cost of victual, arms, horses, and the like.

<sup>2</sup> Northumberland County Records, Orders June 7, 1679.



in modern values, no inconsiderable sum for a single county to pay for any purpose, even in the present times.<sup>1</sup> Westmoreland also incurred a heavy outlay for horses, saddles, bridles, swords, pistols, carbines, boats, and sloops procured for the equipment or use of the forty troopers furnished by its citizens for the same expedition.<sup>2</sup>

Down to 1680, there was a regulation that no steps should be taken to raise men to repel an Indian incursion until the Governor had been informed of the inroad, and his authority obtained to call out the militia. Recent events had shown that the delay thus caused might, in some great emergency only too likely to arise, prove fatal to a large number of the Colony's inhabitants. On account of this anticipation, the Council, this year, requested the Governor to confer on certain officers residing in different parts of Virginia the right to summon the whole body of militia to arms in a moment of pressing need without first sending him word of their intention. The persons invested with this important military power were Colonel Joseph Bridger for the district of Nansemond, Lower Norfolk, Isle of Wight and Surry counties; Colonel William Byrd for that of Henrico and Charles City; Lieut.-Colonel George Lyddall for that of New Kent; whilst Lieut.-Colonel William Lloyd's district was composed of the country lying along the Rappahannock; and Captain George Cooper's of the country situated on the southern bank of the Potomac.<sup>3</sup> Three years later, during Culpeper's absence in England, news having reached the Council that the Seneca Indians were about

<sup>1</sup> Middlesex County Records, vol. 1673-80, pp. 181, 202.

<sup>2</sup> Westmoreland County Records, vol. 1675-89, p. 162.

<sup>3</sup> Colonial Entry Book, 1680-95, p. 46.

to descend upon the frontiers, orders were at once despatched to Colonel Byrd to hold the Henrico horse in readiness to march against the enemy; and he was also to inform Colonel Edward Hill, of Charles City, of the impending danger so as to enable him to prepare himself to come to Byrd's support when the command to advance towards the head of James River was given. The alarm proved to be groundless.<sup>1</sup>

Seven years later, the Council showed an equal degree of vigilance and alertness. A number of murders had recently been committed near Fort Albany in New York by the French and Indians, who had long been threatening the English settlements. As soon as the news of all this reached Virginia, the Council adopted measures for checking and repulsing these allied foes should they extend their incursion southward. Every commander-in-chief throughout the Colony was ordered to see that each company or troop which had been organized in his district was in a state of readiness to start upon a march at a few hours' notice, with their accoutrements in good condition, and their guns well fixed. He was also to see that word was sent to all the inhabitants of his district to give prompt information of the enemy's approach to the nearest militia officer; who, on its receipt, was to summon the persons enlisted in his company or troop to meet at the usual place of rendezvous; and

<sup>1</sup> Colonial Entry Book, 1680-95, p. 186. "Upon the petition of Captain Thomas Cocke and proof thereof made, certificate to the next Assembly is granted unto him for 180 lbs of Tobacco, and cask by him paid to men imprest by order of Hon William Byrd for the transporting of the country's arms and ammunition for the country's service from Mr Francis Eppes' house up to Falls of James River, it being about forty miles." This was in 1685; see Henrico County Records Minute Book, 1682-1701, p. 118, Va. St. Libr.

the same officer was, under these circumstances, also to dispatch messengers to the other militia officers of his county, who were to follow his example in collecting their forces. Should the commander-in-chief think that a greater number of soldiers were needed than one county could furnish, then he was impowered to raise the militia of the surrounding counties on his own authority, provided that he forwarded a full report of his proceedings to the Governor at Jamestown.<sup>1</sup>

That the danger which these elaborate precautions were designed to meet was not a mere phantom of rumor and panic was proven by the fact that, at this time, a party of English hunters, who were exploring the forests about twenty miles beyond the last of the outlying plantations, were attacked by wandering Indians, and some of them killed and others wounded. All such detached parties, whether pursuing game, or seeking to trade with the savages, ran the gravest risk of being destroyed by being shot down unexpectedly from behind trees and rocks.<sup>2</sup> Nevertheless, the presence of such peril, which was quite constant even when peace was supposed to prevail, did not make the General Assembly less determined that idle reports of imaginary Indian incursions should be discouraged by punishing the persons spreading them, although unaware that these reports were without reasonable ground. In 1694, Edward Hatcher, of Henrico, created great consternation there by announcing publicly at different places that, to his certain knowledge, Mrs. Banister and all her family had been slain by the Indians; the militia, in consequence, were summoned to take up arms to repel an incursion; and they

<sup>1</sup> Colonial Entry Book, 1680-95, p. 337.

<sup>2</sup> Letter of Gov. Nicholson, B. T. Va., 1690, No. 7.



actually assembled at the rendezvous on Mr. William Puckett's plantation, where it was soon found out that Hatcher was not justified in making such a statement, either by what he had seen himself, or by what others had reported to him. The county court promptly took up the matter with a view to punishing him for his conduct.<sup>1</sup>

<sup>1</sup> Henrico County Records, vol. 1688-97, pp. 532, 535, Va. St. Libr.

## CHAPTER VIII

### Indian Wars: Forts

MARCHES were not the only means adopted by the colonists to protect their different communities from an Indian attack. In the early history of the settlements, it was customary for the General Assembly from time to time to give orders that every residence should be surrounded by a strong stockade, or palisade as it was then known, which, by making each dwelling house really a private fort, enabled the inmates to offer a successful defence from behind its shelter. Such a regulation was put in force very generally in 1623, the year after the great massacre, an event that had showed so vividly the need of such a fortification; and also, in 1626, when an Indian incursion was again threatened.<sup>1</sup> As the population of the Colony's older parts grew more numerous, and thus raised a barrier against any serious inroad of the savages, the necessity of employing such a means of protection in those parts gradually passed away; and, no doubt, this change in conditions was accepted with great satisfaction; among other reasons, because it must have been troublesome and expensive to erect and preserve a stockade around even the smallest cabin. The custom, however, continued on the frontier long after it had

<sup>1</sup> British Colonial Papers, vol. iii., 1624-5, No. 9; Robinson Transcripts, p. 54.

ceased in the central divisions of the Colony, for there a stockade always served as a valuable fortification for a lonely dwelling house.

At one time, it was sought to protect a great area of country near the end of the peninsula between the James and York Rivers by the construction of a palisade from one of these streams to the other. Although it stretched a length of only six miles,—from Martin's Hundred to Cheskiack,—it shut off the marauding Indians from a reach of field and forest spreading over at least three hundred thousand acres. The first suggestion of this important fortification seems to have come from the General Assembly and was embodied in a letter to the Privy Council written by that body in the course of 1624-5.<sup>1</sup> The idea probably had its origin in the palings which Dale, many years before, had erected in the neighborhood of Henricopolis; more, however, with a view to protect the newly planted corn from the depredations of wild animals, and to keep the cattle and hogs from wandering, than to set up a serious barrier against an inroad of the savages.<sup>2</sup> The palisade seems to have been built by Samuel Mathews and William Claiborne. In the proposition submitted by the two, they requested that they should be paid twelve hundred pounds sterling at once as a fund with which to secure the laborers and materials needed in carrying through the work; that they should be granted patents to six score poles of ground situated on either side of the palisade, where they promised to seat a large number of persons to serve as a convenient guard for its protection; and finally, that they should receive one hundred

<sup>1</sup> British Colonial Papers, vol. iii., 1624-5, No. 8.

<sup>2</sup> Bruce's *Economic History of Virginia in the Seventeenth Century*, vol. i., pp. 209-10.



pounds sterling annually, to be expended in preventing the structure from going to ruin. In return, Mathews and Claiborne bound themselves to erect it before the expiration of eighteen months; to build along the line a succession of blockhouses, each within musket shot of its nearest neighbor on either side; and to station in every blockhouse a garrison of picked men. In the letter setting forth the proposition, they asked that an answer should be given before the ensuing Christmas, as, in case their offer was accepted, it would be imperative for one of them to visit England to procure certain articles that would be needed in the course of the work.<sup>1</sup> The palisade was not completed for some years. In 1634, Harvey reported to the English Government that it was then in existence.<sup>2</sup> Long after the structure had been allowed to go to ruin as no longer required for the country's safety, traces of it remained to remind the neighboring planters of the times when even that part of Virginia, then so remote from the frontier, had once been exposed to the danger of Indian incursions.

As the Colony's frontiers widened, a palisade resembling the one erected between Martin's Hundred and Cheskiack became impracticable; but the blockhouses or small forts protecting such a palisade could be repeated at suitable points without entailing extraordinary expense either to build or to maintain them. A number of these forts had sprung up as early as 1646; and they were then used, just as they were afterwards, not only as points of observation for a carefully selected

<sup>1</sup> British Colonial Papers, vol. iv., 1626-8, No. 10, II. A letter from Wyatt on the same subject will be found in British Colonial Papers, vol. iv., 1626-28, No. 10.

<sup>2</sup> British Colonial Papers, vol. viii., 1634-5, No. 22.

garrison, but also as places from which expeditions seeking to break the Indian power might start out, and to which they might return for safety in case they had proved unsuccessful. In one year alone, 1645, the General Assembly made provision for the erection of three important forts; they were to be known as Forts Royal, Charles, and James; and the sites chosen for them were respectively Pamunkey, the Falls of the James, and the high ridge overlooking the Chickahominy.<sup>1</sup> There was, at this time, standing on the south side of the James, at a place then known as the Middle Plantation, a fortification, which came at a later date to be called Grindall's Old Fort.<sup>2</sup>

In the following year, provision was also made for the building of a fort at the Falls of the Appomattox River, the site of the modern city of Petersburg. The manner in which this fort was erected and a garrison provided for it, was, no doubt, the one then generally followed: the power was conferred upon the lieutenant and deputy-lieutenant in command of the area of country situated within the limits of Bass's Choice, to procure, by means of a public levy, the fund required for the purchase of all the materials that would enter into the proposed structure; whilst the soldiers to defend it were to be drawn from the local militia to the number of forty-five men, of whom three were to be enlisted from Henrico, twelve from Charles City, and fifteen from James City and Isle of Wight respectively. The captain of this company was to possess the right to select all his subordinate officers. The fort itself was to

<sup>1</sup> Hening's *Statutes*, vol. i., p. 293.

<sup>2</sup> Robinson Transcripts, p. 239; Surry County Records, vol. 1645-72, p. 59, Va. St. Libr. The term "middle plantation" was best known in connection with the site of Williamsburg.

be under the medical supervision of a competent physician.<sup>1</sup>

The support of these frontier forts soon becoming extremely burdensome to the people, various devices were adopted to lessen the tax which they imposed. In 1646, two years after the second great massacre, valuable grants of various kinds were made to certain responsible citizens in consideration of their assuming all the charges as well of keeping these forts in a condition of good repair as of maintaining the numerical strength of their garrisons. Thus to Capt. Abraham Wood, Fort Henry, with all outstanding houses, and a tract of six hundred acres adjacent, was presented in return for his agreeing to support at his own cost, for a period of three years, a garrison of ten men in that stronghold; he was also to receive all the arms and ammunition to be found there, and also all the boats belonging to it; and he, as well as the soldiers under his command, were, during the time of their occupation, to be exempted from all forms of public taxation. Six hundred acres, with the like privileges, were bestowed on Capt. Roger Marshall for maintaining Fort Royall, popularly known as Fort Rickahock, with a garrison of ten men; and four hundred on Thomas Rolfe also, with the like privileges, for maintaining Fort James, with a garrison of six men. There was no tillable land situated in the immediate neighborhood of Fort Charles at the Falls of the James, but the General Assembly announced that, should any one purchase the Harris plantation on the south side of the river and also undertake to maintain the fort with a sufficient garrison, he should receive as his own all the boats and ammunition

<sup>1</sup> Henning's *Statutes*, vol. i., p. 315.



belonging to it; and he should also be permitted to pull down all the outstanding houses for the use of the timber and nails. The privilege of exemption from the levy for a period of three years was also to be conferred on him and the men subject to his command.<sup>1</sup> That this provision was really carried out in every case is shown by the action of the York county court in declaring that John Addison, a soldier attached to Fort Royall, could not be taxed because he was under contract to serve as a member of the garrison stationed at that place.<sup>2</sup>

Many years after these forts were erected, in consequence of the extraordinary activity of hostile tribes, a like influence moved the General Assembly to provide for the construction of a large number of new forts to serve the same general purpose. In 1675-6, when the Colonists were suffering severely from the Indians' depredations, a plan was adopted to hold them in check by establishing a chain of posts along the whole line of what formed the frontier at that time. This chain was to begin at a point situated on the upper Potomac, in Stafford county, where eighty men were to be stationed. The second fort was to be raised at the falls of the Rappahannock, and was to be occupied by one hundred and eleven men; the third at a point on the Mattaponi River, where the garrison was to number fifty-two men; the fourth at the Falls of the James, the site of one of the fortifications erected in 1646, but which, by this time had probably gone entirely to ruin. This post was to be held by fifty-five men. The fifth fort was to be built at the Falls of the Appomattox, where an earlier fort,

<sup>1</sup> Henning's *Statutes*, vol. i., p. 327.

<sup>2</sup> York County Records, vol. 1638-48, p. 108, Va. St. Libr.

as we have seen, had once stood; the garrison here was to number fifty-seven men. The sixth fort was to be built on the Blackwater River in Surry, and the seventh on the Nansemond, near its headwaters; each of which was to be occupied by forty men. And finally a fort was to be built in Accomac.

It will be seen that this series of forts was designed to extend from the furthest plantation on the Northwest round to the furthest on the Southwest,—in other words, from the Potomac on the one side, to the Nansemond on the other. It is probable that the distance between the site of each fort and that of its nearest neighbor on either hand, did not, on an average, exceed forty miles. Each site was chosen as possessing commanding advantages, not the smallest of which was the fact that its proximity to deep water allowed easy and safe access in an emergency to the more settled parts of the Colony. The men to be assigned to the defence of these forts were to be raised by a general levy; but each county was to contribute a quota in proportion to the number of its tithables. All the powder and shot at the authorities' disposal was to be divided among these different garrisons according to their respective number of soldiers. The first term of service was to last for four months; but, if necessary, was to be extended to four months more. There were to be provided for each soldier five bushels of shelled corn and sixty pounds of pork or beef; and the quantity in each case was to be renewed at the end of the first four months. In addition, each garrison was to receive a supply of axes, hoes, spades, saws, wedges, and nails. Boats were to be impressed to transport the troops, together with their supplies of all kinds, to the different strongholds. A physician was to be appointed for each

fort; and he was to be furnished with medicines to the value of five pounds sterling for every one hundred men under his care. The commanders of the counties in the immediate neighborhood of each fort were required to hold all the troops under them in readiness to march to its garrison's relief should there be a call for assistance; and in that event, they were to pursue the Indians to their towns, and if possible exterminate them. The entire body of militia, which was liable at any time to be summoned to the aid of all the forts, was placed under the orders of a single commander-in-chief.<sup>1</sup>

It is probable that most of these forts were built, as it was recognized at the time that some extreme step had to be taken to protect the Colony from the incursion of the savages. The erection of each fort did not in itself impose a very heavy charge, as it was constructed in a very simple fashion of materials obtained from the surrounding forests. The maintenance of the garrisons, however, imposed now, as in 1646, a heavy burden on the taxpayers, and led, as in 1646 also, to various devices for lessening the expense. In 1679, a proposition was made by Major Lawrence Smith which was designed to relieve the public of the support of a garrison at the fort on the Rappahannock. He offered to seat fifty men near this fort within an area fronting a mile on the river, and running back a quarter of a mile into the forests; and he would continue to add to this number until he had settled two hundred and fifty on the tract. They would be always prepared to run together to resist an Indian attack as soon as the drum beat the first note of alarm. Smith bound himself also to lead them in pursuit of a more distant enemy whenever he should receive notice from the Governor, Lieut.-General,

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 333.



Major-General, or any of the neighboring inhabitants that their services were needed to put an end to the ravages of some marauding tribe; but they were not to be required to proceed alone more than twenty miles from the fort, should they have good reason to think that the hostile force exceeded their own in strength; at that distance, they were to be permitted to unite with the Colony's regular troops, and thereafter were to be paid wages like the rest of the soldiers. Smith asked that the following privileges should be extended to the persons he proposed to settle: first, they should be allowed a court of their own composed of himself and two others nominated by him, who should enjoy the right to decide all cases a county court was authorized to determine; secondly, they should be governed chiefly by by-laws adopted by a body made up of Smith, two commissioners, and six inhabitants of the tract chosen by the popular voice; and, finally, they should, to the number of one hundred and fifty, be entirely exempted from arrest for debt for a period of twelve years, and for fifteen, should be relieved of all public, county, and parish burdens; and be liable only for the payment of the small taxes imposed to meet the administrative needs of the narrow district to which their homes were to be confined. The privileged area should extend five and a half miles along the bank of the river, of which three miles should lie above the fort, and two and a half below; and it should reach back for a distance of four miles.

The same offer was made by Col. William Byrd for the maintenance of the fort at the Falls of James River. The tract which he proposed to seat in return for the same privileges was to extend five miles up and down on both sides of the river at that point. The tract on

the south side was to spread back into the forest one, and on the north side, two miles.<sup>1</sup>

A remarkable scene occurred in the Rappahannock fort in September of the same year. The commander of that fort at this time was Capt. Cadwalader Jones, who had recently written to Major Robert Beverley in criticism perhaps of the quota of men and horses furnished for the war by Middlesex county under the latter officer's orders. The letter in reply must have been very offensive, for Jones first gave directions that it should be read before the assembled garrison; but not satisfied with this, he caused a fire to be made in full view of the soldiers, now drawn up before him, and holding up the letter so that all could see it, bade them take notice that he valued the writer of that missive, and also the Governor himself, no more than he did the letter itself; and with an air of great scorn and contempt threw it into the flames, where it was soon consumed. Nor did he dismiss the matter even after this act so expressive of extreme disdain, but seizing a stout stick, beat Peter Russell, the corporal who had carried Jones's letter to Beverley and brought back Beverley's answer, until he was (to repeat the language of the record) "black and blue in divers places." The commander then clapped the unfortunate man into the stocks standing within the bounds of the fort.

This incident showed that the secluded situation of the commander of a frontier fort very often fostered in him greater independence of spirit and freedom of action in expressing his opinions and feelings than he would have indulged in had he been less remotely placed. In showering such indignity on a letter coming from an officer of higher rank than himself,

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 448.

Captain Jones either yielded to the uncontrollable impulse of an irascible temper, or relied upon the distance to prevent his conduct from becoming known to those having authority to punish him for insubordination. But it is much more probable that he was aware that his position as commander of a fort buried in the forest wilderness was one so little desired by others that his military superiors would be inclined to wink at the intemperate and insulting character of his act and words, even should news of it reach their ears. The scene also disclosed the extraordinary power assumed over his men by a headstrong commander when withdrawn from the immediate supervision of a higher officer. That Captain Jones's offence brought down upon him no real punishment is proven by the fact that, in the course of the following year, he was allowed fifteen thousand pounds of tobacco in consideration of the extraordinary losses and sufferings which he had personally undergone in the country's service in defending the frontiers. He was still in charge of the fort in 1684, having now been advanced to the rank of Colonel; subject to his orders in this post were one captain and two corporals; whilst the body of the garrison consisted of eighteen soldiers and twenty horsemen.<sup>1</sup>

That there was a fortification of some kind standing on the Potomac at this time is indicated by an order of the Northumberland justices, passed in 1680, requiring the people of the county to contribute a large quantity of salted pork or beef and corn-meal for the

<sup>1</sup> Middlesex County Records, Orders Oct. 6, 1679; Rappahannock County Records, Orders April 2, 1684; Colonial Entry Book, 1682-95, p. 96; Minutes of Council, June 30, 1680, Colonial Entry Book, vol. lxxxvi.



support of the garrison stationed at that place. This victual was delivered to Captain Hudnall, who, when the entire supply had been brought in, transported it in his sloop to the fort.<sup>1</sup> Among the other charges entailed by this stronghold's maintenance at this time was the cost of the medicines procured for its use by Colonel Spencer.<sup>2</sup>

It is possible that this fort was one of the palisaded houses ordered by the General Assembly, in 1679, to be erected at the heads of the four great rivers flowing down from the western mountains. These houses seem to have been designed chiefly for stores; and it was principally for these stores' protection that they were garrisoned. The house intended for the Potomac was required to be built near the Occoquan River, a tributary, and the articles to be placed in it, consisting of a large quantity of nails, carpenters' tools, and kitchen utensils, together with many bushels of salt, were to be supplied by Major Isaac Allerton, Col. George Mason, and St. Leger Codd. At the head of the Rappahannock River, the second storehouse was to be erected; and there was to be raised in its immediate vicinity a small house as a shelter for the ammunition. Major Lawrence Smith was required to procure for this storehouse the same kind of articles as had to be

<sup>1</sup> Northumberland County Records, vol. 1678-98, p. 64.

<sup>2</sup> British Colonial Papers, vol. xxxvii., Doct. 20. "Whereas there is an article of 6200 lbs. of tobacco part of the sum of 10,370 pounds levied this Assembly for Mr. John Quigley, and is charged for medicines delivered to Robert Synock as Surgeon to Rappahannock garrison, and there being but only five pounds sterling appointed to buy medicines for each fort; it is therefore, ordered that, if it shall appear to the court of Rappahannock that the said Synock ought to be allowed the overplus, then he the said Synock shall discount ye same out of what he is to receive from this public levy"; Orders of Assembly, 1680, Colonial Entry Book, vol. lxxx.

provided for the one situated on the upper waters of the Potomac. The buildings at the head of the Rappahannock were to be duplicated at the head of the Mattaponi; also at the head of the James; and for the one, Major Richard Johnston was to purchase the necessary stores, and for the other, Colonel William Byrd.

The men who were to guard these storehouses were to be obtained from the different counties in proportion to the number of their respective tithables. Every forty tithables to be found in the Colony were to contribute one soldier to this service; they were also to supply him with a horse and to equip him with arms, consisting of a case of pistols, a sword, and a carbine or shotgun; and in addition, they were to furnish him with two pounds of powder, and ten pounds of leaden bullets or swan-shot. Nor was their provision to stop here: they were also required to send to the storehouse which he was to assist in protecting, five bushels of shelled maize, two bushels of meal, eighty pounds of salted pork, or one hundred pounds of salted beef. In the beginning, the soldiers' duties were not to be wholly military:—they were expected to fell, maul, and saw the timber for use in constructing the storehouse and the neighboring guard-house. Each garrison was to be supplied with a boat capacious enough to transport three or four horses at one time; and also with one barrel of gunpowder, shot in proportion, and ten long muskets. Each garrison too was to have attached to it four experienced Indian scouts procured from the nearest friendly tribe.<sup>1</sup>

As the garrisons thus raised and maintained entailed

<sup>1</sup> Hening's *Statutes*, vol. ii., pp. 433-40.

a serious public expense, owing to their size, it was decided some years later, danger of Indian attack having now grown less, to reduce each to twenty men. The task of providing for them was, for a valuable consideration, undertaken by several of the Colony's principal citizens; for instance, Colonel William Byrd, in return for two thousand pounds of tobacco for each soldier, agreed to supply the necessary food for the men protecting the storehouse built at the head of James River; Colonel Langhorne, for those protecting the storehouse situated on the Mattaponi; and Major Robert Beverley, for those guarding the one standing near the upper waters of the Rappahannock.<sup>1</sup> In 1680, when there was some perplexity as to how to dispose of the regulars sent out to repress the Insurrection of 1676, it having been concluded that the best use to be made of them was to assign as many as possible to these remote spots, eight were added to each of the outlying garrisons.<sup>2</sup> The Indians had now been so completely subdued that there was not much danger of an early outbreak; nevertheless, it was clearly recognized that no dependence could be placed upon their continuing in a state of quietude unless they were constantly restrained from overt acts by the presence of these garrisons, who were always ready, on the smallest provocation, to summon the militia of the neighboring counties to their assistance.<sup>3</sup> Any step towards the soldiers' withdrawal on account of the expense imposed by

<sup>1</sup> Hening's *Statutes*, vol. ii., Acts 1680; see also Colonial Entry Book, vol. 1676-81, p. 384.

<sup>2</sup> Minutes of Council, July, 1680, Colonial Entry Book, 1680-95, p. 52. The number of men composing each garrison remained the same, as eight of the colonial volunteers were withdrawn.

<sup>3</sup> See opinion of Colonel Spencer expressed in a letter to Secretary Coventry in England. The garrisons, he said, were a "con-



their maintenance always aroused strong opposition. There was, in 1681, a proposition to discharge the troops stationed in the Potomac fort, as it was found to be both difficult and burdensome to provide them with victual. The persons who had first undertaken the contract to supply it having declined to do so any longer, George Brent and William Fitzhugh, looking upon the place's abandonment as a public calamity, came forward and offered themselves as substitutes, so that the garrison was able to remain for the protection of all that part of the Colony.<sup>1</sup>

It was estimated that, for the year 1680-81, the support of the four garrisons stationed at the heads of the great rivers required a tax of forty-seven pounds of tobacco to be levied on every tithable in Virginia.<sup>2</sup> In 1682, the accounts of the contractors who had agreed to furnish this support showed that, during that year, George Brent and William Fitzhugh, the two persons responsible for the maintenance of the garrison in the Potomac fort, had, on that score, not only disbursed about one hundred and seventy-five thousand pounds of tobacco for victual and other supplies, but had advanced about fifteen thousand pounds of the same commodity; no doubt, for the amount of the soldiers' wages. They had also expended about eight thousand pounds for the equipment and support of a small body of supernumerary troops. Colonel William Byrd, who had undertaken to furnish whatever would be needed by the garrison stationed at the head of James River, disbursed, during the same year also, about one

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tinual check on the Indians as a standing guard to the frontiers"; Colonial Entry Book, 1676-81, p. 384.

<sup>1</sup> Colonial Entry Book, 1680-95, p. 96.

<sup>2</sup> Orders of Assembly for 1680-1, Colonial Entry Book, vol. lxxxvi.

hundred and seventy-five thousand pounds of tobacco for victual and other supplies; about fifteen thousand pounds to pay the soldiers' wages; and about sixty-five hundred for the equipment and support of forty supernumerary troops. Colonel George Lyddall, who had undertaken to provide for the garrison stationed at the head of the Mattaponi, and Major Robert Beverley, for the one at the head of the Rappahannock, disbursed on the same accounts a total of about one hundred and five thousand pounds of tobacco, and of one hundred and eighty-nine thousand, respectively. The whole cost of maintaining the four garrisons for one year fell very little short of seven hundred thousand pounds of tobacco. If we estimate this commodity's value at a penny and a half a pound, a low rather than a high figure, the four garrisons' support imposed on the Colony an annual expense of about four hundred pounds sterling, which, in purchasing power, was equal to about eighty thousand dollars in modern currency.<sup>1</sup> That this very large sum represented the expenditure of one year alone and not of two or more, would seem to be shown by the allowance made to Colonels Brent and Fitzhugh, who, as we have seen, had only become the undertakers for the garrison of Fort Potomac twelve months before.

It is not surprising to find that it was soon decided that these garrisons imposed a heavier charge than the Colony could well afford to bear; and this conclusion was

<sup>1</sup> Colonial Entry Book, 1682-95, p. 75. In January, 1682-3, 28,714 pounds of tobacco were paid to Colonels Fitzhugh and Brent as "undertakers" for the Potomac garrison. In 1686, an allowance of 74,910 pounds was made Capt. Edward Bacon on account of another garrison, possibly, however, one stationed in a fort on tide-water; see York County Records, vol. 1684-7, p. 226, Va. St. Libr.

reached the more easily as the tribes which had made the erection of the posts imperative had now sued for peace.<sup>1</sup> There was a general impression also that they had not answered quite fully the purpose for which they were intended. Gradually, the houses built for these four garrisons fell into ruin, or were dismantled, and the Acts of Assembly requiring them to be kept up permanently were repealed. Even when they were first constructed, they were described as being "only slight Virginian houses" to shelter men from the weather, with palisades around them to serve as a barrier in case of an assault. Indeed, it was said at the time that they were "mere shadows of forts."<sup>2</sup>

From the facts stated in the previous paragraphs, it is evident that, from an early date in the Colony's history, the frontier, although always moving further outward, was protected by forts,—some, like those erected under the Acts of 1646 and 1676, of a more or less permanent character; others, like those erected under the Act of 1679, of a purely temporary; but each serving more or less effectively the general purpose for which it was designed. While an Indian war was in progress, the life led by the soldiers belonging to the garrisons of these posts was, no doubt, full of bustle and interest. There was not one moment, whether in the day or night, when the men were entirely free from apprehension of attack. They were never deceived by the silence and peace of the surrounding forests, for, in an instant, it might be broken by a thousand hideous yells from bands of savages lurking in the underbrush, and by the answering battle-cry of the soldiers

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 498.

<sup>2</sup> Minutes of Assembly, Dec. 21, 1682, Colonial Entry Book, 1682-95, p. 66.



from behind their breastworks of log and palisade. At the height of a war, the troops slept on their arms ready to spring to their feet at the first sound of alarm. During such a period, too, they made short incursions into the country around the fort; and these marches were rendered the more exciting by the wariness required to avoid an ambuscade. Expeditions of this kind relieved the tension of life in the fort itself. But when the tribes had been subdued and the garrisons had no reason to anticipate an attack, the soldier's existence in so remote and secluded a spot must have been marked by extraordinary monotony; it is true that he had the companionship of a considerable body of men, and was, no doubt, allowed to divert himself in their company with various games; but in spite of this, his hours must have hung heavily, and his time passed slowly. He perhaps not infrequently regretted the days when the prospect of conflict with the Indians imparted an extraordinary interest to every hour of the twenty-four.

## CHAPTER IX

### Indian Wars : Rangers

AFTER the four standing garrisons were disbanded in 1682, it being still looked upon as unwise to leave the frontiers entirely unguarded, the Assembly provided that eighty light horsemen should be enlisted to patrol the borders. These troopers were chosen from the four principal frontier counties,—Henrico, New Kent, Rappahannock, and Stafford,—because it was in these counties that the upper regions of the four great rivers were situated, the regions calling for the most constant inspection as those most open to the incursions of hostile tribes; and also because it was in these counties that it was easiest to find men, not only thoroughly familiar with the country to be scoured, but of long experience in every branch of Indian warfare.<sup>1</sup> There was attached to each of several, if not of all, of the four garrisons which, previous to 1682, had been stationed near the storehouses erected on the Potomac, Rappahannock, Mattaponi, and James Rivers, as already described, a small body of horsemen who had performed duties like those now undertaken by the Rangers; but whilst that body, no doubt, made many excursions, it probably did not wander very far from the fort to which the men belonged. It formed an important part of the fighting force of that post, and

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 498.

its services could not have been long dispensed with. During the whole time these troopers were stationed on the frontier, a war with the Indians was in progress, which made it the more urgent that they should be near the fort almost without any interval of absence.<sup>1</sup> On the other hand, the work designed for the light horsemen organized in 1682 was to be of a less bold and aggressive character; no open war was now going on, and there were no forts or storehouses to be guarded; it followed that their only duty was, after the manner of mounted scouts, to move from point to point to observe whether there was any sign of secret marauding on the part of the Indian tribes.

A muster of the Rangers belonging to each of the four regions lying towards the headwaters of the great rivers was ordered to be held at least once a year; and not less than once every fortnight, they were to pass over the country assigned to their charge. Immediately upon the discovery of a war-party of Indians, they were to dispatch one of their own number to the nearest officer of the militia; who in his turn was to take prompt steps to inform the higher military authorities of the presence of a hostile force; and he was also to go forward to meet that force, and either check its further advance or exterminate it altogether. The captain of each troop of Rangers was required to be a property holder residing in the district; and in his absence, the corporal assumed the command. The importance of the positions occupied by these two officers was shown

<sup>1</sup> The commanders of garrisons were authorized by the General Assembly to impress a man and horse in the vicinity to carry a message to the Governor or the nearest member of the Council. It was declared that to send a trooper on such an errand would curtail the strength of the post too much; see Colonial Entry Book, 1680-95, p. 207.



by the fact that the one, for his annual salary, received as much as eight thousand pounds of tobacco; and the other as much as three thousand; whilst the wages of the common soldier amounted to two thousand pounds. But every member of the troop, from the highest to the lowest, was expected to supply himself, at his own expense, with a horse, arms, ammunition, victual, and other necessities.<sup>1</sup>

An Act passed in 1684 renewed the main provisions of the previous measure. The number of Rangers in each corps, however, was to be larger; each was to contain thirty men instead of twenty; and should sufficient volunteers not offer to make up the necessary force, the captain, by a warrant from the Governor, was authorized to impress as many members of the militia as should be wanted to complete the body. The commanders-in-chief of the counties furnishing these soldiers were to recommend whatever person belonging to the troop they should think the fittest to receive the lieutenantship; and in the captain's absence, this person was to succeed to that officer's place. Every member of the company being still required to supply his own horse and general equipment, the captain's annual salary was fixed at ten thousand pounds of tobacco, and the lieutenant's and each private soldier's at five and three thousand respectively. Once a week, instead of once a fortnight as formerly, the captain was to cause his men to assemble at the rendezvous for the purpose of making a tour of the country assigned to them to scour. In order to facilitate their passage of the great streams in the course of this tour, a boat was ordered to be placed at a convenient point on each of

<sup>1</sup> Henning's *Statutes*, vol. ii., p. 498. This Act was renewed in 1683; see Colonial Entry Book, 1680-95, p. 166.

the most important rivers flowing through the country they were obliged to patrol, such as the James, the Pamunkey, the Rappahannock, and the Occaquan.<sup>1</sup>

Before two years had passed, it was concluded that the Colony's revenues did not justify the maintenance of the different corps of Rangers. The annual expenditure on their account was estimated to have amounted to at least five hundred thousand pounds of tobacco,<sup>2</sup>—which represented about thirty-one hundred pounds sterling, with a purchasing power of sixty thousand dollars in modern currency. But the usefulness of the Rangers was, after their disbandment, only too clearly perceived whenever there was a prospect of war with the Indian tribes; under these circumstances, the plan was soon adopted of organizing a small body of light horsemen for special service. This occurred in 1690, at which time apprehension of a French and Indian invasion prevailed. The Governor, acting under the authority of a law recently passed, gave orders to the commanders of the militia belonging to the counties situated near the upper waters of the four great rivers, to enlist eleven troopers in each of those regions, each of these corps to be placed under the command of a lieutenant suggested by the member of the Governor's Council residing in the part of the Colony where that particular corps had been raised. It was the duty of these small bodies of troops to pass from river to river in their respective districts not less than once a week; and if occasion demanded it, even more frequently.

<sup>1</sup> Hening's *Statutes*, vol. iii., p. 17. Capt. William Soane commanded the Henrico County Rangers in 1685; see his claim to compensation for the loss of a horse in the service; Henrico County Records, vol. 1682-1701, p. 118, Va. St. Libr.

<sup>2</sup> Hening's *Statutes*, vol. iii., p. 38; Colonial Entry Book, 1682-95, p. 182.

As soon as they should observe the enemy's approach, they were to inform the nearest officer of militia; he in his turn was to inform the commander-in-chief of the county; and the commander, the Governor. In the meanwhile, all the forces in that immediate division of country were to be put in motion to stop the enemy's advance. In order that there might never be delay, a certain section of the militia were always held in readiness to co-operate with the Rangers on a minute's notice; and two Indian scouts were also attached to each corps of the latter.<sup>1</sup>

These small bodies of men were also employed during a part of 1691, in scouring the same regions.<sup>2</sup> The Council gave orders that, from November 15th to March 1st, they should remain disbanded, on the ground that it was contrary to the habits of the Indians in this division of America to make an incursion during the winter season, and that some relief to the taxpayers would be created by removing, for that length of time, the burden of maintaining the Rangers.<sup>3</sup> It was, however, soon found that

<sup>1</sup> B. T. Va., 1690, No. 11; Orders of Council, March 7, 1690, Colonial Entry Book, 1680-95. The wage of the Indian scouts consisted of eight yards of duffield cloth, two barrels of Indian corn, and a horse and saddle apiece. The following is from the Henrico County Records under date of 1691: "Lieut. Giles Webb for himself and two Indians in part, 1105 lbs; to ye owners of ye Indians' horses each 778 lbs.; to eleven soldiers each, 352 lbs.; equal to 3872 lbs."

<sup>2</sup> Minutes of Assembly, April 5, 1692, Colonial Entry Book, 1682-95. When the General Assembly convened in 1691, it approved the action of the Governor with reference to the Rangers, and empowered him to continue them as long as he should deem it advisable. That body also gave orders that a road should be built from a point above the last settlement on James River to a point on Rappahannock River, also above the settlements; see Hening's *Statutes*, vol. iii., pp. 82-5.

<sup>3</sup> Orders of Council, Oct. 27, 1691, Colonial Entry Book, 1680-95.



the savages were not inclined to linger in their own towns until the spring had opened; in December, serious depredations were committed by them in Stafford county, although the weather was unusually severe. The Potomac Rangers, having been ordered to go in pursuit, soon came upon the track of the marauders; and following them up rapidly, captured the whole number at a point situated thirty miles beyond the last plantation.<sup>1</sup>

An Act passed in 1692 continued the same bodies of men in service; and this measure was renewed in 1693 and 1695. The Governor and Council, by the provision of these laws, were empowered to organize a supernumerary troop for co-operation with each of the bands of Rangers. The officers of this additional force were to be paid large salaries in consideration of their supplying themselves, at their own expense, with horses, arms, ammunition, food, and whatever else was required.<sup>2</sup> The cost of supporting so large a number of soldiers did not now fall entirely on the taxpayers of the Colony; had it done so, the General Assembly would not have left it in the discretion of the Governor and Council to raise and disband the several corps. The import duty on liquors, at this time, brought in an annual revenue of one thousand pounds sterling; and this large sum could now be appropriated for military purposes.<sup>3</sup> Under the authority granted them, the

<sup>1</sup> Orders of Council, Oct. 27, Dec. 8, 1691, Colonial Entry Book, 1680-95. The Indians were escorted to Jamestown. They do not seem to have gone beyond acts of robbery and destruction of property.

<sup>2</sup> Hening's *Statutes*, vol. iii., p. 98.

<sup>3</sup> B. T. Va., 1692, No. 118. The charge on the taxpayers, however, was always considerable. The following is from the Henrico Records; see Public Levy, Oct. 5, 1693:

Governor and Council, in 1694, increased the band of Rangers assigned to the region of the upper waters of the Potomac; and also the one engaged in patrolling the country lying on the upper waters of the James. About eighteen new men were added to each corps because Colonel Richard Lee had reported the presence of strange Indians on the Potomac frontier, where they had inflicted already considerable damage.<sup>1</sup> Four years later, there being no reason to anticipate an Indian attack, and the winter being close at hand, the Rangers were again disbanded, but apparently only for a time.<sup>2</sup>

It is probable that much less difficulty was found in securing volunteers to serve as Rangers than as members of the stationary garrisons; for the life led by the former appealed far more strongly to the taste of the young Virginian of that day than the life led by the latter. The Rangers were always on horseback and in motion; and though required to patrol a particular division of the frontier, were never bound to hark back to one spot. The freedom, the freshness, the remoteness of the primæval woods was all theirs. Passing day after day through the intricacies of the pathless forests,—which were now clothed in the thick foliage of spring and summer, or now stripped naked by the winds of the late autumn and winter,—they

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“ To ye owners of ye two horses for the Indians . 1556 lbs. of tob.  
 To their pay . . . . . 1189 “ “ tobo.  
 To ye Lieut. and 11 soldiers head of James River 3447 “ “ “ ”

The levy in Lancaster County, Dec. 14, 1693, for the same purpose amounted to 7375 pounds of tobacco; the levy in Lower Norfolk to 2000 lbs.; in York to 4270; and in Potomac to 3375.

<sup>1</sup> Minutes of Council, June 13, 1694, Colonial Entry Book, 1680-1695.

<sup>2</sup> Minutes of Council, Oct. 28, 1698, B. T. Va., vol. liii.

## The Military System

were always changing their surroundings, and thus evaded the monotony of scene and occupation that must have rendered so stagnant the ordinary existence of the soldiers belonging to the garrisons. Apart from the possibility of encountering the savages as they advanced from hill to hill and valley to valley, under that vast roof of green leaves or bare limbs, they were constantly starting up game, which afforded both sport for the moment and food for the daily meal. The bear, the deer, the wild turkey, the pheasant,—they must have hourly crossed the paths of these wandering guardsmen; and it required the motion of a second only to unsling the carbine and empty its contents into the fleeing quarry. Such a company, mounted on their spirited plantation horses, and dressed in the buckskin costume of the frontier as that best adapted to stand hard wear, must have presented a remarkable spectacle as they moved along through those remote scenes; there was a romantic wildness about their situation, a silent grandeur in their surroundings, independently of the mere picture formed by their own procession, which must at times have impressed the dullest mind among them. And at night, as they, having picketed their horses, gathered in the bivouac and sat or reclined in the half light of their fire, with that vast and impenetrable darkness rising like a wall in the background, and with those mysterious sounds of nocturnal insects, birds, and animals, and moaning tree tops, breaking the silence whenever their own voices sank low or ceased entirely, the scene could hardly have failed to strike even them, though accustomed to its repetition once every twenty-four hours.



## CHAPTER X

### Foreign Invasion : Early Forts

NOT all the measures adopted for the Colony's protection were designed to raise a strong barrier against Indian incursions; the steps taken to guard against foreign invasion from the direction of the sea were even more careful and elaborate. This was especially true of the forts erected at certain eligible points along the edge of the lower tidewater, which, in spite of numerous defects springing from inadequate materials and poor workmanship, were very much superior as mere fortifications, whether in the skill shown in their construction, or in elements of permanency, to that series of stockaded forts and palisaded houses which had, from time to time, been built at the heads of all the principal streams, from the Nansemond in the south to the Potomac in the north.

The first fort raised in Virginia by the English settlers was erected at Jamestown not long after the Colony was founded at that place. In the beginning, it was of the rudest and most perishable design, for it was formed simply by casting together the limbs of trees in the shape of a half moon. The work was done with extraordinary pains, but nevertheless in haste as a means of protection should an attack be made by the Indians from the direction of the land, or by the Spaniards from the direction of the river. The construction

of the fort was under the supervision of Captain Kendall.<sup>1</sup> An assault by the savages proved that a stronger fortification was needed. The new structure was in the shape of a triangle, with the base, which was four hundred and twenty feet in length, resting on the stream, and with each side running back three hundred feet in length. A watch tower was situated at each angle; and on the top of each of these "bulwarks," as they were designated, pieces of ordnance were mounted in such a manner as to command the approaches from that quarter. This ordnance consisted in part of culverins, and in part of demi-culverins. Sometimes, they seem to have been loaded with stones, which were as well calculated to frighten the Indians as iron shot when hurled through the branches of the forest over their heads. The principal gunner of this fortification at first was probably Robert Tindall, who, before coming out to Virginia, had served in that capacity to Prince Henry.<sup>2</sup>

When Smith became President of the Colony, he seems to have changed the shape of the fort from one of three to one of five sides.<sup>3</sup> With his usual practical sagacity, he determined not to rely upon this fortification alone as a means of protection should a foreign

<sup>1</sup> *Works of Captain John Smith*, vol. i., p. 151, Richmond edition.

<sup>2</sup> Percy's Narrative, p. lxx., *Works of Captain John Smith*, Arber's edition; see also *Works*, vol. i., p. 163, Richmond edition; Tyler's *Cradle of the Republic*, p. 70; Brown's *First Republic*, p. 129; Brown's *Genesis of the United States*, vol. i., p. 108.

<sup>3</sup> *Works of Captain John Smith*, vol. i., p. 192, Richmond edition. In his account of the site of Old Jamestown, one of the most remarkable contributions made in recent years to the study of the history of Virginia, Mr. S. H. Yonge suggests that the expression used by Smith should be considered as applying to the form of the town after its enlargement; see *Va. Maga. of Hist. and Biog.*, vol. xi., p. 275.

enemy press so far up the James,—he also built a second fort “near a convenient river upon a high commanding hill” as a place to which the English might retreat should they be compelled to abandon Jamestown by the superior forces and weapons of an invading foe.<sup>1</sup> When Smith returned to England, the colonists were in possession of twenty-four pieces of heavy ordnance, an ample number for the defence of every fortification they had erected.<sup>2</sup> In order to protect Jamestown on the side on which it was still open to attack, a blockhouse was built at a point where it would command the principal approach from the mainland; a second blockhouse was erected after Dale’s arrival in 1611; and a third before the Company’s charter was revoked in 1624.<sup>3</sup>

Under the regulations enforced by Dale, the sanitary condition of the fort at Jamestown was carefully looked after. No one was permitted to wash soiled linen in the street of the town, or throw dirty water out of their doors or windows, or to rinse a foul kettle or pan near the well, for fear lest the air circulating within the fortification’s confines might become contaminated, and the health of those in charge seriously affected.<sup>4</sup> Such regard for hygienic laws was extraordinary in these early times, and indicates the minute thoughtfulness of the general rules adopted by Dale for the physical well-being of the colonists.

<sup>1</sup> *Works of Captain John Smith*, vol. i., p. 227, Richmond edition. This fort, it seems, was never quite finished. A curious stone house stood until recent years on a plot of high ground near the lower Chickahominy River, and this is supposed to have been the fort referred to in the text; see Howe’s *Virginia*.

<sup>2</sup> *Works of Captain John Smith*, vol. i., p. 240, Richmond edition.

<sup>3</sup> Tyler’s *Cradle of the Republic*, p. 100.

<sup>4</sup> Divine and Martial Laws, p. 15, Force’s *Historical Tracts*, vol. iii.



The second fort fronting on tide-water erected in Virginia was situated at the modern Point Comfort near the mouth of the James. This fortification, known at first as Fort Algernon, was a mere earthwork unsupported by either stone or brick. In 1611, it seems to have consisted of a stout stockade standing probably within a line of earthen walls; at this time, it contained seven pieces of heavy ordnance and several of lighter weight, while its garrison numbered forty persons, armed with arquebuses, and commanded by Captain John Davis.<sup>1</sup> This spot was selected as the site of a fortification because the river's channel here, in spite of the stream's great width, was so narrow that it was possible for the smallest cannon to project a missile in full force across it. As all vessels bound up the James were compelled to pass by way of this channel very near to the shore, it was supposed that a fort here could easily stop the further progress of a hostile ship. Such a fort was more important at first because, in the beginning, the several settlements were planted on the James River. Fortress Monroe is to-day, of all the fortifications of English origin on the American continent, the most ancient; the continuity of its history is almost unbroken owing to the existence, throughout three hundred years, of the same fact, namely, the contracted area of deep water at this point; and this condition will continue to make the presence of a fort on this spot advisable unless the character of modern warfare undergoes an extraordinary change.

<sup>1</sup> Report on Voyage to Virginia, Brown's *Genesis of the United States*, vol. ii., pp. 516, 519. This fort saluted Dale on his arrival in 1611; see Dale's Letter to Council, printed in Brown's *Genesis of the United States*, vol. i., p. 489. After George Percy's departure from the Colony, the name "Algernon" given in honor of the Percy family, was discontinued; see Brown's *First Republic*, p. 190.

When De la Warr, on his arrival in Virginia, assumed the duties of the Governorship, he gave orders for the erection of two forts on the Southampton River at Kikotan. The sites chosen for them were on opposite sides of the stream, and only a musket shot apart. One of the objects designed in their building seems to have been to afford to newcomers from England a place where they might safely rest and refresh themselves after the fatigues and anxieties of a long ocean voyage. The forts, which were named in honor of Princes Henry and Charles, were defended by artillery. In their immediate vicinity, there was found a wide area of fertile cornland, originally the fields cultivated by the Indians; and the whole surrounding country abounded in deer, fish, wild fowl, and fruits,—indeed, so overflowing was it in all forms of natural products suitable for food, that the men belonging to the garrisons of the two posts received from the public store only one half of what was allowed in other places.<sup>1</sup>

De la Warr, during his brief sojourn in Virginia, gave orders that a third fort should be built at the Falls of the James, the head of tide-water in that stream.

<sup>1</sup> *Works of Captain John Smith*, vol. ii., p. 6, Richmond edition. Report on Voyage to Virginia, Brown's *Genesis of the United States*, vol. i., p. 519; Hamor's *Discourse*, p. 33. The site of one of these forts was known as "fort field" as late as 1694; see Elizabeth City County Records, vol. 1684-99, p. 57, Va. St. Libr. The "fort field" contained one hundred and ten acres, "one side upon John's creek, ye other side upon a small creek coming out of Hampton River, one parte facing on James River and soe running into ye woods"; see same records, vol. 1684-99, p. 333, Va. St. Libr. At least one of the forts maintained its old outlines until 1629 as the following shows: in a deposition touching William Capps, made November 2, 1629, Lieutenant Waters said of himself: "Being at Capt. Purefoy's and walking in the forte, etc."; see British Colonial Papers, 1629-30, No. 32.

It is not probable that this fort was ever held by a garrison; and if built at all, it is likely that it was very frailly constructed.<sup>1</sup> Henricopolis, situated some miles further down the stream near the line of the modern Dutch Gap Canal, was so built by Dale that it formed a strong fortification, whether attacked from the side of the land or of the river. The whole town was surrounded by a stout stockade, with a watch tower at each of its four corners, where sentinels were stationed, and several pieces of heavy ordnance mounted as at Jamestown.<sup>2</sup>

Before many years had passed, the only two forts kept up were those situated at Jamestown and Point Comfort. The fortification at the latter place consisted, after Dale left the Colony, of a small earthen fort surrounded with palisades, within which there stood a storehouse, a second house used perhaps as a powder magazine, and several thatched cabins occupied by the members of the garrison. These buildings were in time entirely destroyed by fire.<sup>3</sup> When Yeardley arrived in 1619, there were practically no fortifications in Virginia capable of resisting a foreign enemy. At Jamestown, only two demi-culverins remained serviceable; even these were mounted on rotten carriages; and they were said to be better fitted to batter down the houses in the town than to repulse an approaching foe.<sup>4</sup> A few months afterwards, the London Company was compelled to borrow four minions

<sup>1</sup> De la Warr's Relation, Brown's *Genesis of the United States*, vol. i., p. 481.

<sup>2</sup> *Colonial Records of Virginia*, State Senate Doct., Extra, 1874, p. 75.

<sup>3</sup> A Briefe Declaration, *Colonial Records of Virginia*, State Senate Doct., Extra, 1874, p. 73.

<sup>4</sup> *Ibid.*, p. 80.



of the East India Company for the Colony's defence.<sup>1</sup> The former body now showed great solicitude as to the restoration of the fortifications; a committee having been appointed at one of the quarter courts in England to recommend the measures to be adopted to bring this about, its members held several interviews with General Cecil, a distinguished soldier of that period, and the name of an engineer, a Frenchman by birth, was suggested as the person most capable of supervising the work; but apparently nothing further was accomplished at the time.<sup>2</sup>

In 1621, the Company directed Governor Wyatt to build forts and blockhouses at the mouths of the great rivers as a protection against a foreign enemy.<sup>3</sup> Influenced by these instructions perhaps, Captain Samuel Each, of the *Abigail*, proposed to the Company that, if they would assure a full cargo for his vessel, both on its outward and return voyage, he would carry over a dozen carpenters, who, with some assistance from the colonists, would, before the end of the year, raise a fortification at Blunt Point, on James River, capable of barring the passage of the stream beyond that place. His plan was to use as the site for this fortification the enormous banks of oyster shells lying in the water there near the shore. The Company having accepted his offer, promised to obtain for him the necessary workmen; who, it was agreed, should be supplied with food by the people of the Colony, but, during the progress of construction, should be lodged in Each's ship. All the tools required, such as axes, shovels, and spades,

<sup>1</sup> Brown's *First Republic*, p. 299.

<sup>2</sup> A committee was appointed in March, 1619-20. Abstracts of Proceedings of Va. Co. of London, vol. i., p. 46.

<sup>3</sup> Randolph MS., vol. iii., p. 161.

were to be sent over from England. The Company guaranteed an amount of freight that would assure Each a round sum of eight hundred pounds sterling; and should the process of building be unavoidably continued beyond March, 1623, he was to receive one hundred and sixty pounds sterling for every month the task was prolonged; but this additional sum was to be paid, not by the Company, but by the people of the Colony, for whose protection the fort was to be erected. The cost of the tools and instruments necessary for the undertaking's performance was estimated at three hundred pounds sterling; which amount was to be advanced by the Company, with the understanding that it was to be returned after the sale of the tobacco crop of the following year. It was calculated that the whole outlay to be entailed by the project would fall little short of two thousand pounds sterling, equal in purchasing power at that time to fifty thousand dollars in our present currency.

When the workmen strove to dig below the crust of oyster shells, they found their further progress barred. The Governor and Council seem to have inspected the site in person to find out what means should be adopted to overcome the obstacle; but apparently in vain; for they soon decided that the only possible plan for guarding the channel was to build a fort on the mainland. As the first step toward erecting this fortification, every twentieth man residing in the Colony was compelled to contribute his services towards the prosecution of the work; and Captain Roger Smith was appointed to supervise their labors. Unfortunately, before the fort was finished, the necessary supplies were so nearly exhausted that it was found impossible to maintain more "mouths than would

suffice to keep the place." Apparently, it was never entirely completed.<sup>1</sup>

In the course of April, 1623, the Privy Council complained to the Governor that the fortifications were not maintained to the extent demanded by their importance as the only means of defence against foreign invasion.<sup>2</sup> Butler, in his effort to ruin the Colony's reputation, as a vent to his disappointment in not obtaining an office there, declared that, when he visited it, there was nothing in any of the settlements, whether at Kikotan or at Jamestown, which could be properly described as a fort; and that all the fortifications which had been erected had gone wholly to decay. In their reply to this attack made at a time when the people were still demoralized by the Massacre, the Virginian authorities asserted that, while no fortifications in the strict sense of the term remained, there were several places where heavy ordnance was still mounted, and still capable of doing execution, should occasion demand it; at Jamestown, for instance, there were yet intact four great guns; at Fleur de Hundred, six; at Kikotan and at Newport's News respectively three; at Charles City, two; and at Henricopolis, seven. These cannons consisted of culverins and demi-culverins; and they had not been seriously injured by exposure to the weather.<sup>3</sup>

The laxness undoubtedly shown at this time in keeping up the fortifications raised as a defence against a foreign attack was due in part to the Colony's poverty,

<sup>1</sup> Abstracts of Proceedings of Va. Co. of London, vol. i., p. 173; Randolph MS., vol. iii., p. 169; *Works of Captain John Smith*, vol. ii., p. 64, Richmond edition; British Colonial Papers, 1622-3, No. 22, 1624-5, No. 1.

<sup>2</sup> Colonial Entry Book, 1606-62, p. 205.

<sup>3</sup> Abstracts of Proceedings of Va. Co. of London, vol. ii., p. 178; Neill's *Va. Co. of London*, p. 399.



which made their maintenance a greater burden than could be easily sustained; and in part to the sense of security fostered by an exemption from foreign interference from the beginning of the Colony's existence. Under this double influence, the indifference complained of by the Privy Council had steadily grown. Then too, there was probably a feeling that, against a really strong foreign force, the only effective fortification would be that barring the narrow channel at Point Comfort. In March, 1624-5, the General Assembly, in an address to the English Government, declared that the most useful fort in Virginia was the one situated at this place, but that it was a heavy charge on the people's resources to keep even this one alone in good condition.<sup>1</sup> It is probable that, by this time, the original fort at Point Comfort, with the possible exception of the earthworks thrown up in the beginning, had disappeared; for, in May, 1626, Governor Wyatt is found pressing upon the Privy Council's attention the urgent need of building fortifications near the mouths of both the York and the James. At that point in its course, the York greatly contracted before expanding into the broad waters of the Bay. Wyatt declared that, to accomplish these two tasks, it would require an annual contingent of at least two hundred laborers to be sent out from England during a period of several years; and that it would also be necessary to import a number of skilful engineers to superintend the scientific construction of the works. He also claimed that one of the most sensible advantages to be obtained from the erection of a palisade between Martin's Hundred on the James to Cheskiack on the

<sup>1</sup> British Colonial Papers, 1624-5, No. 8.

York was that, within the area thus protected, there could, without difficulty, be raised all the draught-animals that would be wanted to transport the materials for the projected structures; and also the food required by the workmen.<sup>1</sup> Any means of lightening the expense of building the forts, even though as fanciful as that suggested by Wyatt, was eagerly considered by the people. Without some assistance from the outside,—so the General Assembly bluntly declared in 1629,—the Colony was too poor to assume so great an undertaking; nor is there any reason to question the good faith and good sense of the statement.<sup>2</sup> It is true that timber was easily procured, but then it had to be carried a great distance; and there were neither boats of sufficient size to transport it nor oxen to haul it. Workmen were lacking entirely, or could only be obtained at ruinous wages; whilst tools could only be acquired by purchase in England.

As late as 1629-30, William Pierce was able to assert, no doubt with perfect accuracy, that there was then in the Colony "no manner of fortification" against a foreign enemy,<sup>3</sup> though quite probably there were still numerous guns to be found at different places fronting the James River. For instance, only two years before, Abraham Pierce had, for the defence of the Hundred bearing his name, planted not less than ten pieces of ordnance, which were ready at a moment's notice to fire upon an approaching enemy.<sup>4</sup> Three years afterwards also, the General Assembly gave

<sup>1</sup> British Colonial Papers, 1626-8, No. 10.

<sup>2</sup> Randolph MS., vol. iii., p. 213.

<sup>3</sup> British Colonial Papers, 1629-30, No. 24; see also *Works of Captain John Smith*, vol. ii., p. 259, Richmond edition.

<sup>4</sup> Robinson Transcripts, p. 54.

orders for the construction of sixteen carriages, on which it was proposed to mount that number of guns.<sup>1</sup>

<sup>1</sup> Henning's *Statutes*, vol. i., p. 143.



## CHAPTER XI

### Foreign Invasion : Fort at Point Comfort after 1630

**I**T was not until 1629-30 that a successful effort was made to erect fortifications in Virginia that should prove to be permanent in their character. The first of the new forts to be undertaken was the one built at Point Comfort on the site of the original stockade and earthwork. It was thought at this time that the safety of the greater part of the Colony depended upon the absolute mastery of the narrow channel here; and that one strong fortification at this spot would, in the way of defence against a foreign enemy, accomplish more than a half dozen situated higher up the river. In a letter addressed by Governor Harvey to the English Government, in 1629, with a view to securing skilful mechanics, he urged that fifty men, furnished with all the tools, food, and clothing which they would require for one year, should be sent to Virginia at once to begin the construction; and that for a period of three years, fifty workmen annually should be despatched thither to fill all vacancies caused among the first contingent by sickness or death. Harvey affirmed that this fortification could be easily completed by the end of thirty-six months; and that the whole expense to be entailed could be made good by hiring out the workmen as agricultural servants as soon as their labors on

the fort should terminate; or they might be employed in building a second fort at some point situated further up the James. According to the estimate furnished by Harvey at this time, there were now only about twenty pieces of ordnance in Virginia: and these consisted of culverins, demi-culverins, and sakers. He urged the English Government to send out at least twenty additional pieces in order that the projected fortifications might be fully armed to resist attack; and he declared that, if they were to possess an ample supply of powder, it would be necessary that at least forty barrels of this article should be despatched at once; and that every succeeding year not less than twenty barrels, together with a large quantity of the other munitions of war, should be imported into the Colony.<sup>1</sup>

Governor Harvey's recommendations seem to have made a strong impression on the Privy Council, for, in their reply, they instructed him to have the site of the proposed fort surveyed, and to send this plat, together with a model of the structure itself, to England for examination and approval.<sup>2</sup> Six months after the date of Harvey's letter, the General Assembly engaged in a lengthy debate on the subject of the same fortification, and in March, 1629-30, ended by passing an Act providing for its early erection.<sup>3</sup> The general plan agreed upon was to build a fort which would afford room for not less than twelve, nor more than sixteen, pieces of heavy ordnance; and the hope was expressed

<sup>1</sup> British Colonial Papers, 1629-30, No. 22.

<sup>2</sup> *Ibid.* Harvey sent the plat and model to England in the course of 1630; see British Colonial Papers, 1629-30, No. 93.

<sup>3</sup> Hening's *Statutes*, vol. i., pp. 144, 150; Randolph MS., vol. iii., p. 214.

that it would be completed before the next Christmas had rolled around. The whole cost of the undertaking, it appears, was to be assumed by the colonists, although so little able to bear so great an expense. That they were willing to do this was, at the time, interpreted as a proof of how firmly rooted in their hearts was their determination to make Virginia their permanent home.<sup>1</sup> Burdensome as the outlay was, the General Assembly, no doubt, perceived that it would be impossible to allow Point Comfort to remain unfortified without jeopardizing the safety of all the people seated along the James River, and that the Colony had as well now make the necessary sacrifices to build the fort, since there was no real prospect that this would be done by the English Government.

Samuel Mathews, who, as we have seen, had been one of the two persons contracting to build the palisade across the Peninsula, undertook alone to erect the projected fort. Before he began work, however, the site at Point Comfort was carefully viewed by a committee appointed by the General Assembly, and composed, with one exception, of men now taking a leading part in the Colony's military affairs, namely, Captains Robert Felgate, Thomas Purefoy, Thomas Grays, John Uty and Thomas Willoughby, Lieutenant William Perry and Mr. Thomas Heyrick. It was also left to them to choose the model for the proposed fortification, and to arrange with Mathews the terms of his remuneration.<sup>2</sup> Mathews must have proceeded with great expedition, for by the end of February, 1631-2, the work had been completed. So little did he spare his

<sup>1</sup> British Colonial Papers, 1629-30, No. 95.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 150; British Colonial Papers, 1629-30, No. 93.



own means in pushing it forward, that he sank a large part of his private estate in carrying through his contract; and so well known was this fact that the Assembly urged the Privy Council, as a way of reimbursing him, to confer on him the whole of the customs that, in the future, would be collected at Point Comfort.<sup>1</sup>

The General Assembly adopted almost immediately the various measures necessary for the preservation and maintenance of the fort. All ships making up the James were ordered to deliver to the chief officer in charge of the fortification one barrel of powder and ten shot for every one hundred tons in their total tonnage<sup>2</sup>; this provision was renewed the same year; but an Act passed twelve months later required the payment by such ships of only one quarter of a pound of powder, and a proportionate quantity of shot, for every ton embraced in the burden of each vessel.<sup>3</sup> These laws seemed to assure an ample supply of ammunition. A fund for keeping the fort in good condition was obtained by imposing on every person arriving at Point Comfort, and on every tithable belonging to his family, a tax of sixty-four pounds of tobacco, to be paid just as soon as he had, after purchasing or patenting a plantation, produced one crop.<sup>4</sup>

The first officer to be placed in command of the fort at Point Comfort was Francis Pott, a brother of the Governor bearing the same name. But he was soon

<sup>1</sup> Randolph MS., vol. iii., p. 219.

<sup>2</sup> *Ibid.*, p. 218, Acts of March, 1631-2. A Proclamation by Harvey, dated Sept., 1632, refers to the fort at Point Comfort; see Hening's *Statutes*, vol. i., p. 191.

<sup>3</sup> Randolph MS., vol. iii., p. 223.

<sup>4</sup> Hening's *Statutes*, vol. i., p. 222. The newcomer, however, was exempted from this tax if he did not cultivate tobacco the first year after his arrival.

deprived of the position by Harvey on a pretended charge of misbehavior; returning to England, he was thrown into the Fleet prison, where, for nearly a year, he languished in constant danger of the plague, which had found its way in among the wretched inmates.<sup>1</sup> Francis Hook, who was as much a partisan of Harvey as Pott had been an opponent, followed next; but he seems to have managed the affairs of the fort so badly that, at his death, the magazine did not contain enough powder to afford a load to discharge over his grave. This was due in part to the fact that he had loaned the fort's entire stock to Lieutenant Upton, of Isle of Wight county, to enable the latter's company to repel an Indian invasion.<sup>2</sup> His memory, however, was not left unhonored by a mournful salute: one hundred pounds of powder were lent by Captain Thomas Willoughby to be expended in this manner by the garrison on the occasion of the interment.<sup>3</sup>

Hook was followed by Capt. Christopher Wormeley, who owed his appointment to Harvey, since the Governor of the Colony had the right to fill temporarily such a vacancy when caused by death. Wormeley, during the first year of his incumbency, found it impossible to obtain a large supply of powder, as the commanders of the different vessels touching at Point Comfort asserted that they had already paid their quota to his predecessor; and the amount which he did

<sup>1</sup> Captain Pott was charged with abetting Harvey's deposition; see British Colonial Papers, 1634-5, Nos. 74, 91; 1636-38, No. 12.

<sup>2</sup> British Colonial Papers, 1639-43, No. 5. In recommending Hook, who had opposed Claiborne in the Kent Island troubles, Harvey declared that he was well known to the Lord Treasurer, and to most of the members of the Privy Council; see British Colonial Papers, 1634-5, No. 54; also No. 74.

<sup>3</sup> Robinson Transcripts, p. 14.

obtain was so poor in quality that it hardly served to fire a salute as each ship took its departure, the custom prevailing at this time. When Captain Richard Morryson arrived with a commission from the King to supersede Wormeley, he found only sixteen pounds of powder in the magazine.<sup>1</sup> The fort had now fallen into decay.

The question arose as to how the means were to be obtained for making the necessary repairs. Before Captain Hook's death, a register of the passengers arriving at Point Comfort was carefully kept, and the ships bringing them in were charged at the rate of sixpence for the entrance of each person's name and the administration to each of the oaths of allegiance and supremacy. The design of this tax, as of the tax of sixty-four pounds of tobacco to be paid out of his first tobacco crop by each newcomer for every tithable in his employment, was to assure a fund for the fortification's restoration from time to time; but the merchants introducing new settlers and indentured servants raised such a clamor against this impost, small as it was, that it was soon suspended by the action of the Privy Council in England.<sup>2</sup> How great was the need for a permanent fund of some kind to keep the fort in a state of repair was shown by the fact that, in March, 1639-40, the General Assembly was forced to lay a general levy of two pounds of tobacco per poll in order to build what was in reality a new fort at Point Comfort<sup>3</sup>;

<sup>1</sup> See Letter of Governor Harvey and Council, British Colonial Papers, 1639-43, No. 5.

<sup>2</sup> British Colonial Papers, 1639-43, No. 11.

<sup>3</sup> Randolph MS., vol. iii., p. 230; Hening's *Statutes*, vol. i., p. 226. Sometime previous to 1638, Harvey was authorized to levy a general tax for the same purpose, and steps seem to have been taken to send Menefie to England in order to obtain the skilled



and in order also to secure the requisite quantity of powder and shot, the former law compelling every shipmaster arriving there to deliver to the chief officer an amount of those materials proportionate to his vessel's tonnage, was again enacted.<sup>1</sup>

Every ship passing Point Comfort on its way up the James was required to cast anchor within the range of the fortification's guns. As soon as it stopped, the commander of the post went on board to collect the duty. In that remote spot, the arrival of every vessel from England must have been a pleasant break in the monotony of existence; and no doubt the reception given the different sea-captains was not altogether formal, as they brought the latest news from the Mother Country, and not improbably some gift of highly acceptable supplies for the officers of the fort itself. But there were times when the commander had trouble with the captain of some one of these ships. In 1670-1 such an instance occurred; the captain of a vessel just arrived was asked to pay the usual duty, but declined positively to do so; he was arrested; and when ordered to go on shore, not only refused, but, heaping terms of abuse on the officer, expressed the utmost contempt for his authority. In the end, having been forced to appear before the General Court, he was sentenced to pay a fine of thirty pounds sterling, one half of which was for the King's use, the other half for the use of the captain of the fort.<sup>2</sup>

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workmen required; see British Colonial Papers, 1636-8, No. 97. The captain of the fort in 1633 was paid 2000 lbs. of tobacco per annum, and in addition, ten bushels of corn; the gunner 1000 lbs. of tobacco, and six bushels of corn; and the drummer the same; Hening's *Statutes*, vol. i., p. 222.

<sup>1</sup> Robinson Transcripts, pp. 330-1.

<sup>2</sup> *Ibid.*, pp. 29-30.

The office of commander was not without its drawbacks on account of the insalubrious situation of the Fort. When Captain Morryson, in 1641, obtained permission to visit England, his principal object, it would seem, was to secure medicines for the restoration of his health, affected quite probably by the malarial atmosphere of the surrounding country. He entered into a bond to return by the first ship sailing for Virginia; in the interval, the deputy, whom he was authorized by his commission to appoint, was to perform the duties of the place.<sup>1</sup> Berkeley, recently nominated to the Governorship, reached the Colony about this time, and among his instructions was one requiring him to see that at least ten guards were maintained at Point Comfort, and that the commander of the post received a proper salary; but this officer apparently had no reason to complain on this account, for a general tax seems to have been levied for his support. The tobacco paid in for his benefit was always to be delivered in a condition for immediate shipment.<sup>2</sup> From time to time, special grants of income were made him; in 1645, for instance, the General Assembly bestowed on him the whole amount of uncollected rents and quit-rents which had accrued from certain leased lands situated in Northampton county. As it was particularly designed in this case to reward Captain Morryson, the payment was limited to his continuance in office.<sup>3</sup> Nor were the guards under his command devoid of special privileges; by Act of Assembly, they were

<sup>1</sup> Robinson Transcripts, p. 26. Francis Morryson, a brother of Richard, was in command in 1641.

<sup>2</sup> See Lower Norfolk County Records, Orders Sept. 6, 1641. Instructions to Berkeley will be found in Colonial Entry Book, 1606-62, p. 225.

<sup>3</sup> Hening's *Statutes*, vol. i., p. 322.

exempted from the legal process of distress<sup>1</sup>; and they seem also to have received very satisfactory wages.

The commission granted to Berkeley in 1650 by Charles II., at that time residing at Breda, empowered him to erect in Virginia "castles, forts, and places defensible." These fortifications, which were to be constructed "of lime and stone and other materials," were to be built with walls, bulwarks, battlements, and loop-holes.<sup>2</sup> One of the most memorable concessions made to the colonists in the terms of the surrender to Parliament in 1651 was that, whilst they themselves should be at liberty to erect forts and maintain garrisons, the English Government should not possess the right to do this in Virginia without its inhabitants' consent.<sup>3</sup> The fort at Point Comfort, however, continued for some years yet to be the only real fortification situated in the Colony designed for defence against a foreign enemy; and all the Acts passed about this time touching fortifications of that character related apparently without exception to this one. It was provided, in 1654, that every ship arriving at Point Comfort should drop anchor and fold its sails at once; and that the captain of the vessel should at the earliest moment repair to the commander of the fort in order to deliver a list of the passengers on board, to pay the customs and castle duties, and it would seem, also, to take an oath that he would obey the laws of Virginia during his stay there.<sup>4</sup> The only vessel not subject to the castle duties was one owned exclusively by persons residing in the Colony.<sup>5</sup>

<sup>1</sup> Robinson Transcripts, p. 241.

<sup>2</sup> Colonial Entry Book, 1606-62, p. 246.

<sup>3</sup> Randolph MS., vol. iii., p. 243.

<sup>4</sup> *Ibid.*, p. 260.

<sup>5</sup> *Ibid.*, p. 265.



So important was the collection of the castle duties at Point Comfort thought to be that all who refused to pay them were liable to an attachment of their personal estates.<sup>1</sup> These duties were, in 1660, granted to Governor Berkeley for his private benefit; but, the following year, were restored to Colonel Francis Morryson, now in command of the fort, to whom, as the General Assembly declared, they "rightly belonged" through the gift of the King.<sup>2</sup> Morryson, who had probably been displaced during the Puritan Supremacy, had again been nominated to his former position. The owners of the ships trading with the Colony now made a determined effort to have the castle duties abolished altogether, on the ground that there was no fortification there which assured protection to vessels; but this petition, instead of proving successful in its main object, only influenced the Privy Council to give instructions that these duties should be paid, not as then was done, in goods or coin to the amount of twelve pence for every ton of freight, but in powder and shot as at an earlier period.<sup>3</sup> In some parts of Virginia at this time, an export tax of three pennies a hogshead was imposed under the name of a fort duty.<sup>4</sup> But in spite of all these castle charges, whether levied in the form of money on imported merchandise or exported tobacco, or in the form of ammunition alone, the fort at Point Comfort remained, as the merchants had asserted, incapable of resisting a really powerful enemy. This was shown by the action of the authorities in 1665, when hostilities broke out between the English and

<sup>1</sup> Randolph MS., vol. iii., p. 253.

<sup>2</sup> Hening's *Statutes*, vol. ii., p. 134; Robinson Transcripts, p. 244.

<sup>3</sup> British Colonial Papers, vol. xvi., No. 93.

<sup>4</sup> Hening's *Statutes*, vol. ii., p. 23.

Dutch nations,—so soon as news of that event reached the Colony, the Governor and Council hastily issued an order requiring Colonel Miles Cary, who seems to have been in command during Morryson's absence in England, to impress men and vessels to assure the prompt transportation to Jamestown of all the ordnance at that time mounted at Point Comfort.<sup>1</sup>

The Colony now spread over such a wide area of country that the fortification at that place, even if it had been capable of stopping the further progress of hostile ships making their way up James River, would have afforded no protection at all to the plantations situated along the York, Rappahannock, and Potomac. Nevertheless, not even yet did the General Assembly think the people could bear the expense of erecting the additional forts needed for the defence of those settlements. In 1665, however, the Governor was impowered by that body to build a second fort apparently somewhere within the confines of Jamestown; in order to accomplish this, he was authorized to impress all the mechanics and common laborers whom he would require; and also to enter upon any man's land and cut down whatever timber would be wanted, provided that he paid at the rate of sixpence for each tree. Every person belonging to the trained bands of James City and Surry counties was directed to contribute his services during at least six days towards the completion of the work; and Captain William Bassett was employed, at a remuneration of ten thousand pounds of tobacco, to supervise the whole undertaking. It was proposed that the garrison of the fort as soon as finished should consist of the guard attending the Governor at the regular meet-

<sup>1</sup> *Va. Maga. of Hist. and Biog.*, vol. v., p. 22; Robinson Transcripts, p. 177.

ings of the General Court; and that the Captain of that guard should be appointed to the position of Commandant. By these means it was expected that the cost of maintaining the fortification would be greatly reduced.<sup>1</sup>

Either the English authorities did not consider the plan to build a new fortification at Jamestown advisable, or that plan had not been reported to them when, in the course of the same year, they sent instructions to the Governor and Council to restore the fort at Point Comfort to its former state of repair, which, no doubt, was intended to include the return of the ordnance removed during the recent war. Berkeley, with evident reluctance, was thus forced to abandon the project of strengthening the defences of Jamestown. "We had already designed," he wrote to Arlington in July, 1666, "a fort at Jamestown in the centre and heart of the country, but commanded so positively, we durst not disobey to erect a fort in the extremities of the province."<sup>2</sup> Thomas Ludwell, at a later date, was far more outspoken in his opposition; he declared that the fort at Point Comfort would require at least forty soldiers, in addition to officers, to man it properly; that the country surrounding it was so barren that the garrison could not produce their own bread by cultivating it; that the water was brackish; and that, however strong the fortification there might be made, it would afford no protection against foreign invasion

<sup>1</sup> Henning's *Statutes*, vol. ii., p. 220. It would appear from a letter of Berkeley, dated August 1, 1665, that the building of other forts was under consideration: "We want great guns for the forts we are erecting, but dare not at this time of exigency to beg them of his Majesty, but will supply them the best we can out of the merchant ships"; British Colonial Papers, vol. xix., No. 85.

<sup>2</sup> British Colonial Papers, vol. xx., No. 117; see also Robinson Transcripts, p. 251; British Colonial Papers, vol. xx., No. 125, 125, i.



to the inhabitants of those parts of the Colony lying on the other rivers.<sup>1</sup>

Such objections having made no impression on the English Government, the Governor and Council were compelled to take active steps to carry out its command. An entirely new fort appears to have been designed. In order to build it, one hundred and five men, with the necessary number of tools and quantity of provisions, were impressed in the neighboring counties of Nansemond, Lower Norfolk, Warwick, and Elizabeth City; and for their accommodation, a house, forty feet in length and twenty in width, was erected at the Point.<sup>2</sup> Long before the main structure of the fort had been carried very far in process of building, it was decided to mount eight long guns; Colonel Yeo was employed to do this; and he was empowered to enlist the services of as many men as he would require. Among these guns were several formerly belonging to the frigate *Elizabeth*, which had recently been destroyed by a Dutch fire-ship. Goring Dunbar was placed in charge of the ordnance.<sup>3</sup>

By the King's order, all the duties to be paid by the incoming ships in the future, as well as the arrears remaining uncollected, were to be used in meeting the

<sup>1</sup> British Colonial Papers, vol. xxi., No. 64.

<sup>2</sup> Orders March 29, 1666, *Va. Maga. of Hist. and Biog.*, vol. v., p. 27. Capt. Thomas Cary was appointed superintendent of the work; Randolph MS., vol. iii., p. 304.

<sup>3</sup> Robinson Transcripts, pp. 120-1. The guns from the burnt frigate soon proved useless, no doubt, from the damage received in the fire; see Letter of Thomas Ludwell to Arlington, British Colonial Papers, vol. xxiv., No. 65. Of the fourteen mounted in 1667, the majority had been lying in "salt sand" for thirty years; see British Colonial Papers for June, 1667, No. 61. "Goring" Dunbar was probably the same person as "Gawin" Dunbar, who served as gunner at a later date.

heavy expense of building the fort.<sup>1</sup> It was estimated that, in a favorable year, the duties alone would swell to as large a sum as three hundred pounds sterling; but, as a rule, the amount was very much smaller than this.<sup>2</sup> It required, however, much greater resources to complete the fortification, owing to certain obstacles to be overcome: first, in consequence of the instability resulting from a subsoil of loose sand, only timber could be used, and this could only be obtained by floating it down the river in rafts, which were liable to heavy loss by their frequent rupture through the action of wind and wave; secondly, even after the timber had been securely drawn on shore, it was only at a great cost that it could be laid in such a manner as to create a perfectly firm foundation. No brick or stone could be used, as the weight of such material demanded the support of piles, for driving which the Colony afforded no facilities. In June, 1667, it was estimated that at least sixty thousand pounds of tobacco had been spent in building the fort; and it was calculated that it would require double that sum to finish it, should the original design be carried out of allowing room for fourteen guns.

The structure was never finished. In explanation of this fact, Secretary Ludwell, writing to Arlington, stated that the physical obstacles to be overcome were not to be surmounted, but even if they could be, the expense of building would be insupportable.<sup>3</sup> The Governor and Council, who had been so submissive to the English Government's instructions the year before,

<sup>1</sup> Randolph MS., vol. iii., p. 303.

<sup>2</sup> British Colonial Papers, vol. xxi., No. 14.

<sup>3</sup> See letter of Thomas Ludwell to Arlington dated February 12, 1666-7, British Colonial Papers, vol. xxi., No. 18. See also for details in text, British Colonial Papers for June, 1667, No. 61.

also frankly declared, in a communication to that Government, that, even if a strong fortification could be erected at Point Comfort, the other rivers of the Colony would remain unprotected.<sup>1</sup> The General Assembly, already disposed to be very yielding to Berkeley's wishes, now eagerly sustained him; they asserted that, in attempting to complete the fort, great difficulty in procuring materials for its further construction was certain to arise; that should it be finished, it would be hard to secure the necessary number of guards; and that a hostile ship might easily, with a favorable wind and tide, run by it without being the target for more than a couple of shots. Having once passed, such a ship might, at its leisure, prey upon the merchantmen lying in the upper waters of the James River as well as spread havoc among the adjacent plantations.

<sup>1</sup> British Colonial Papers for June, 1667, No. 61.



## CHAPTER XII

### Foreign Invasion : Later Forts

THE General Assembly soon decided that the Colony was sufficiently prosperous to erect the numerous fortifications so long needed for the country's defence against foreign invasion. It was determined to build at least five forts, each to be situated at a place where, even if it would not bar the passage of the enemy's vessels, it would at least under its guns afford a shelter for English ships. One fort was to be erected at Tindall's Point on the York River; the second at Corotoman on the Rappahannock; the third at Yeocomico on the Potomac; the fourth at some point to be selected on the James; and the fifth at an eligible spot on the Nansemond. Each of these forts was to be constructed by the group of counties to which it belonged more immediately; and the undertaking was to be carried through under the general supervision of a commission appointed by the county courts,<sup>1</sup> and hav-

<sup>1</sup> "Whereas at an Assembly held at James City, Sept. 23, 1667, it was enacted that the county courts of the respective and several associations in Virginia should be impowered to convene and make choice of such commissioners as they should think fit to entrust for the carrying on and erecting of forts for the safety of the country, and the Commissioners of York this day meeting and taking in their serious consideration the great abilities required in any trust committed to said commissioners, have, in obedience to said Act, made choice of Col. Nathaniel Bacon and Col. George Reade as commissioners for said county, who are thereby authorized

ing the right to choose special overseers and to bestow on them the power to impress all the men and appropriate all the materials they would require. It was provided that the walls of each of these forts should be raised to a height of ten feet; and that they should have a thickness of at least ten in those parts facing the river and shipping. Each fort too was to be spacious enough to accommodate not less than eight pieces of heavy ordnance, whilst, within its confines, sufficient area was also to be reserved for a court of guard and a magazine. A force of four men, in addition to a gunner, was to be maintained in each fort during times of peace; and the expense of this small permanent establishment was to be met by the imposition of castle duties and by assessments in the ordinary county levies. On the first cause for alarm arising, the guard was to summon reinforcements from the nearest body of militia.<sup>1</sup>

The General Assembly, now acting on its own responsibility, determined not to complete what remained of the fort at Point Comfort. This decision was reached after a special committee, which had made a personal inspection of that fortification, had reported that a fort at this place could only be erected and maintained by an extraordinary expenditure; that it did not really command the channel as had long been supposed, since there was a depth of fifteen feet to the distance of at least one mile from the shore; and that not fifty men capable of bearing arms resided within four miles of the spot. Moreover, there was a dearth of wholesome water, and the adjacent lands were infertile. The committee, probably as a foregone conclusion, recom-

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and impowered to perform all things according to ye tenour of ye said act"; York County Records, vol. 1664-72, p. 198, Va. St. Libr.

<sup>1</sup> Acts, 1667, Randolph MS., vol. iii., p. 308.

mended that the fort for James River should be built, not at Point Comfort, but at Jamestown.<sup>1</sup> Berkeley a few years later justified this decision on the additional ground that the vicinity of Point Comfort was very unhealthy.<sup>2</sup>

There is some reason to question Berkeley's sincerity in giving, either through himself, or his mouthpiece, the General Assembly, such plausible reasons for leaving the fort at Point Comfort to go to ruin. This was the time when the Councillors and Burgesses together were beginning to pursue a policy entirely submissive to the Governor, whose personal interests were much more likely to be protected by a fort at the capital town than by one near the mouth of the river. The physical obstacles to be overcome in erecting a fortification at Point Comfort were undoubtedly greater than those to be overcome at Jamestown, but it is doubtful whether the one spot was more unhealthy, as to either the air or the water, than the other. A fort at Jamestown protected that place alone; the abandonment of the fortification at Point Comfort threw every plantation on the river, from Elizabeth City to the Falls, open to foreign invasion. From the Colony's foundation, it had been clearly recognized that the most admirable site for a fort was at the Point; and it was not until the selfish spirit of the Reaction began to prevail in Virginia that the drawbacks of a fortification on that spot were magnified beyond their true character as an excuse for leaving the whole river undefended except at the one place where the Governor resided and owned property, and the Long Assembly annually convened.<sup>3</sup>

<sup>1</sup> Report, Sept. 26, 1667, Randolph MS., vol. iii., p. 312.

<sup>2</sup> Hening's *Statutes*, vol. ii., p. 51.

<sup>3</sup> The object of most of the new forts was not so much to bar the



By the end of 1667, the five forts which the General Assembly had authorized were in course of erection. The one at Jamestown was now nearly finished.<sup>1</sup> The manner in which the fort at Yeocomico was built, no doubt, was common to nearly all. The regulations relating to its construction were both numerous and varied: first, a house forty feet in length, twenty in width, and nine in pitch, divided into two rooms, with two inside chimneys, was ordered to be erected for the workmen's accommodation; secondly, these workmen, who were not to exceed twenty-five in number at one time, were to be obtained in succession from each of the four parishes situated in Northumberland and Westmoreland counties; thirdly, forty barrels of meal and four thousand pounds of pork were to be impressed for their support; fourthly, they were to be subject to the supervision of at least three superintendents; fifthly, the lines of the fortification were to be traced by Mr. John Webber, a professional engineer, who also was to overlook the course of building; sixthly, the nails and plank were to be furnished by Mr. John Lee; seventhly, the space within the walls was to embrace twenty-five hundred feet; and finally, the fortification, as soon as finished, was to be supplied by purchase with eighty demi-culverin round-shot of four-inch diameter, twenty cross-bar shot of the same size, twenty saker

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passage of hostile ships as to afford protection within the range of their guns to all vessels taking position there for safety. As Jamestown was so high up the river, it did not serve this purpose so well as a fort at a lower point would have done. It is not improbable that Berkeley was influenced in desiring a fort at Jamestown, instead of at Point Comfort, by the fact that, as Commander, he would have been entitled to the castle duties.

<sup>1</sup> British Colonial Papers, vol. xvi., No. 143.

shot of three-inch diameter, and also five cross-bar shot of the like dimension. There was to be bought, too, a large quantity of round cross-bar and saker shot of two and a half-inch diameter, besides a considerable number of ordnance ladles and firelock muskets. This purchase was to be made by Colonel Henry Muse, to whom eight pounds sterling were to be advanced for that purpose.<sup>1</sup>

Such were the regulations adopted by the committee of the associated counties situated on the Potomac. Each of the committees here and elsewhere was empowered to fill any vacancy in its ranks caused by death or prolonged absence.<sup>2</sup> The fund which they were authorized to pay out for the construction of the five forts was obtained by a public levy, but in this expenditure, they were subject to the Assembly's general directions; that body, in 1671, for instance, ordered the entire number to retain the sums collected for these forts' reparation until they had accumulated such an amount as would enable them to rebuild in a more permanent form all the existing fortifications. Each possessed the right to appoint an officer to collect the duties payable at the fort under its charge<sup>3</sup>; and these duties had, by 1676, become so large in volume that the committees were instructed to refrain from levying a special tax for the fortifications' maintenance.<sup>4</sup> After 1680, however, the duties were diverted by the General Assembly to other purposes, certainly for a

<sup>1</sup> These details were agreed upon by the General Committee for the associated counties of Westmoreland, Northumberland, and Stafford; see Northumberland County Records, vol. 1666-72, pp. 29, 32.

<sup>2</sup> Acts, Sept., 1671, Colonial Entry Book, vol. lxxxvi.

<sup>3</sup> Hening's *Statutes*, vol. ii., p. 291.

<sup>4</sup> Acts, June, 1676, Colonial Entry Book, vol. lxxxvi.

time, and the committees were again made dependent on public taxation.<sup>1</sup>

In the beginning, the General Assembly had appropriated a sum of three hundred and sixty-eight pounds sterling for the construction of the forts.<sup>2</sup> In spite of the large amount paid out in building, and the annual sums expended in repairing them, they were constantly falling into a state of dilapidation. Nor was this due entirely to the disintegrating touch of a very variable climate, which ranged from the excessive dryness of August to the equally excessive humidity of April,—from extreme heat to extreme cold. Berkeley, no doubt, explained the fact, at least partially, when he declared that, during his term of office, there had never been an engineer residing in the Colony having sufficient knowledge of his profession to understand how to build a fort properly; and that as the work of construction was done without any real skill or art, each fortification could only be kept in a fairly good shape by repeated restorations.<sup>3</sup> This opinion was confirmed by the general condition of the five forts only three years after they had been completed, owing to the perishable character of the materials of which they were made. Several of these forts had already fallen into a state of “utter demolishment”; several were fast going to ruin; while only one could be repaired at small charge. An order was now issued by the General Assembly that all the forts which had sunk into a condition of complete dilapidation should be reconstructed entirely of brick; and that those only needing repairs should, to that

<sup>1</sup> Minutes of Council, July 8, 1680, Colonial Entry Book, vol. lxxxvi.

<sup>2</sup> Acts, Sept., 1668, Colonial Entry Book, vol. lxxxvi.

<sup>3</sup> Henning's *Statutes*, vol. ii., p. 51.



extent, be restored with brick also, as promising greater power of resistance against decay. The commissioners of the associated counties having these fortifications in charge were instructed to carry out this improvement; and should the amount in hand from the collection of fort duties be inadequate, they were impowered to lay a general levy to make good the deficiency.<sup>1</sup>

About 1673, it having been decided to renew the fort situated at Jamestown, the Governor and Council undertook to make the necessary arrangements for its reconstruction.<sup>2</sup> In a formal agreement with the commissioners of the group of associated counties which included James City, William Drummond and Theophilus Hone bound themselves to erect at once a fortification at Jamestown to extend a length of two hundred and fifty feet and to be composed entirely of brick; but so slow were they in pushing forward the work that, at the end of several months, they had proceeded only to the point of collecting on the spot a small quantity of timber and of making a few bricks; and the latter were reported to be so bad that the commissioners were ordered by the Assembly to meet at Jamestown to inspect them.<sup>3</sup> The contractors themselves were threatened with prosecution should they fail to carry out the agreement.<sup>4</sup>

When the traveller Clayton arrived in the Colony, the fort at Jamestown had been completed. He described it as being a large brick wall built in the shape of a half moon. It was situated at a point where it commanded the channel of the stream, but in reality

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 294.

<sup>2</sup> Robinson Transcripts, p. 262.

<sup>3</sup> General Court Records, vol. 1670-76, p. 149.

<sup>4</sup> *Ibid.*, p. 141.

afforded no real defence to the town. All hostile ships passing up the river were entirely safe from attack until they came directly opposite the fortification; and even then, so Clayton asserted, could throw the garrison into such confusion by a carefully aimed broadside that the fort would be prevented from offering any effective obstruction to the enemy's further progress. Indeed, the fortification, in Clayton's opinion, did not amount to more than an excellent blind from behind which wild duck and geese could be shot at to advantage. He anticipated the judgment of modern engineers in thinking that an earthwork would have proved far more capable of resisting the impact of a cannon ball. It was his conclusion that Archer's Hope, situated below Jamestown, was a more appropriate site for a fort, as the river's channel there lay nearer to the shore.<sup>1</sup>

The merchants trading with Virginia had never approved of the abandonment of the fort at Point Comfort, and their opposition to that step was greatly intensified by the destruction in James River, in 1673, of a large number of their vessels by a Dutch man-of-war,—a disaster that proved how totally inadequate were the means afforded by the fort at Jamestown for the protection of such vessels, and also for the defence of the plantations exposed to ravage. Anticipating a loud outcry from the merchants, and wishing to diminish the impression which this might make on the English Government, the Governor and Council promptly addressed a letter to the King reiterating their former grounds of objection to the restoration of the fortification at Point Comfort: they again declared that a hostile ship, taking advantage of a favorable wind and

<sup>1</sup> Clayton's *Virginia*, p. 23, Force's *Hist. Tracts*, vol. iii.

tide, could, without serious damage, easily run by any fort which the Colony could erect there, however strongly and skilfully built, or however well armed. It would require, they said, a battery of fifty large pieces of ordnance to defend it, and such a battery would cost at least fifteen thousand pounds sterling, a sum far beyond the pecuniary resources of all the counties combined. Even if the King himself should assume the expense of building and arming the fort, the people of Virginia would be unable to support the charge of a garrison. The funds for the purpose would have to be obtained by imposing a special tax on every ship arriving in the Colony. At the present time, the fort duties were so small in amount that they did not bring in a sum sufficient to pay the gunners' salaries, cover the cost of powder, or meet the expense of repairing the fortifications. The Governor and Council earnestly justified the plan, which had been already carried out, of building a fort at some eligible spot situated on the banks of each of the five principal streams; for each of these forts, they said, afforded the protection of its guns to the vessels trading in the adjacent waters. If, on the other hand, all the available income of the Colony were expended in the construction of a single fort at Point Comfort, then only James River would enjoy immunity from attack.<sup>1</sup>

The merchants might have acknowledged the force of these arguments without lessening the correctness of their assertion that it was wiser to maintain a fort

<sup>1</sup> Letter of Governor Berkeley and Council, July 16, 1673, British Colonial Papers, vol. xxx., No. 51, I. They also suggested that, in time of war, a convoy should always accompany a fleet of merchantmen on the outward voyage. In 1667, the gunner at each fort received a salary of fifty pounds sterling per annum; see Acts, Sept. 20, 1667, Colonial Entry Book, vol. lxxxvi.



at Point Comfort than at Jamestown, because, on the whole, affording a more convenient shelter to vessels on an enemy's arrival in the river; and this too even if it were admitted that the fortification's guns could not prevent the passage of the channel by a hostile ship. They, no doubt, agreed with the Governor and Council in thinking that a fort was now needed on the banks of each of the other great streams; but because such additional forts were required, was, in their opinion, no reason why the only fortification erected on James River should be placed at Jamestown. It was the merchants who really suffered in the event of a great disaster like the one happening during the Dutch war. Whether the ships had just arrived in the waters of the Colony, or were just departing for England, they were loaded with cargoes belonging in the bulk to the merchants alone. Such cargoes were their property, whether composed of goods about to be imported, or of tobacco about to be exported. The protection of the ships touched their prosperity more closely even than it did the Virginians', for if the ships were coming in when destroyed, the planters had not yet purchased the merchandise they contained; and if the ships were on the point of going out, the planters had sold the tobacco lying in their holds, and as a mass really experienced no personal loss. It was the merchants, therefore, who were most vitally interested in the vessels' protection from attack; and for that reason, it was, no doubt, the merchants also who could be relied upon most confidently to choose the proper place in each river for the construction of a fort.

The citizens of Isle of Wight and Lower Norfolk sought the General Assembly's permission in 1673 to erect two forts, one of which was to be situated on

Warrosquoick Bay, and the other on Elizabeth River; and consent was given on condition that the general proposition should be approved by the majority of the people residing in those counties, and the entire cost of building the two fortifications borne by the local taxpayers.<sup>1</sup> A record of the vote taken, the following year, in Lower Norfolk to decide the question shows that its inhabitants declared in favor of erecting a fort there; but the choice of a site, and the model of the fort itself, were left to the judges of the county court. This body, true to the military custom of those times, preferred a half moon as the shape. In order to procure the necessary number of workmen, each justice was empowered to compel all the men residing in the part of the county assigned to him, to contribute respectively at least two days' labor towards the construction of the fortification; relays of workmen were thus constantly provided; and it was arranged that each individual should bring with him the tools as well as the victual he would require for so short a period. This fortification apparently was not built before the end of many months. When completed, it had entailed a cost of about thirty-five thousand pounds of tobacco, an amount of that commodity, valued at the rate of one penny and a half a pound, equal to a sum of two hundred and eighteen pounds sterling, a sum which, in that age, had a purchasing power of five thousand dollars, no inconsiderable burden for one county to assume to ensure for ships protection against foreign attack.<sup>2</sup>

The erection of a fort in Lower Norfolk, and also in

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 307.

<sup>2</sup> Lower Norfolk County Records, vol. 1666-75, p. 103; see also levy, Oct. 16, 1675.

Isle of Wight, was rendered necessary by the abandonment of the fortification at Point Comfort. Had the fort there been first thoroughly restored, and then amply supplied with heavy ordnance, it would have afforded all the shelter required by vessels trading in James River and its tributaries. The absence of such a fort imposed on all the counties situated above the Point an expenditure of funds which would have gone far towards both building and maintaining a fort at the latter place in a state of great efficiency. As might have been confidently expected, the question of re-establishing this fort was soon raised again, only to find the General Assembly as eager as before to resist the proposition; they complained that many tons of tobacco had already been paid out in the effort to erect a permanent fortification on this site, but so far without success; and they protested that it would be highly inadvisable to undertake so costly a project.<sup>1</sup> They were supported in this opinion by the three Commissioners sent out from England to settle the disturbed affairs of Virginia. When the people of Lower Norfolk, who had been compelled, as we have seen, to build a fort at their own expense, bitterly criticised, in their list of grievances, the General Assembly's action in allowing the fort at Point Comfort to go to ruin, these Commissioners frankly replied that, in their judgment, it was not practicable to construct, garrison, and maintain an enduring fortification at that place.<sup>2</sup> This opinion of the three, if formed independently of the General Assembly's influence, was entitled to great weight, as at least two of them were men of military training, and all were in a position to reach disinterested

<sup>1</sup> Acts of 1676, Colonial Entry Book, vol. lxxxvi.

<sup>2</sup> Winder Papers, vol. ii., p. 158.



conclusions touching all matters affecting the Colony's welfare.

The Committee of Trade and Plantations, however, did not concur in this opinion, and in not doing so, anticipated the judgment of more modern times, which has always pronounced Point Comfort to be one of the most important sites for a fortification to be found on the North and South Atlantic coast. They earnestly recommended that all the quit-rents to be collected in Virginia after February 1678-9 should be devoted to the erection of a fort here as the most appropriate situation for such a fortification, whether it was desired to repel foreign invasion, or to suppress domestic sedition. In declaring themselves so strongly, the committee, no doubt, were guided by information obtained from the principal merchants engaged in the trade with the Colony.<sup>1</sup>

<sup>1</sup> Colonial Entry Book, 1676-81, p. 267.

## CHAPTER XIII

### Foreign Invasion: Later Forts (*Continued*)

SOON after his arrival in Virginia in 1681, Culpeper visited the different places where forts were either going to be erected or were already in course of building. Among these places was Tyndall's Point on the York River. The construction of the fortification here had made some progress. Apparently all the bricks to enter into its composition had been manufactured,<sup>1</sup> and most of these had probably been laid in their final position. Nevertheless, what he saw failed to satisfy Culpeper, who, being a man of some military education and experience, was fully capable of forming a correct judgment; he declared that there was neither at Tyndall's Point nor at any other spot in the Colony a fort strong enough to protect ships, even though lying under its guns, from a vigorous attack by a hostile vessel, or to resist an assault from the side of the land by an invading foe. Nor was it practicable to obtain the strength required without an outlay of tobacco far greater than the inhabitants could afford to expend for such a purpose. "I do not believe," he concluded in his report to the English Govern-

<sup>1</sup> John Mathews, in 1679, failed to win his suit against John Page for work done about a house in which were stored the bricks made on Col. Baldry's land for "building fort James at Tyndall's Point"; York County Records, vol. 1675-84, orig. p. 113.

ment, "that it is possible to secure ships anywhere against a greater sea force except on going so high up into the rivers that better ships will not think to follow them."<sup>1</sup>

If the fortifications on the coasts then in existence were incapable of making a very successful defence, it was not to be attributed to the absence of heavy ordnance. A few years before, Berkeley had declared that fifty large pieces were necessary for the complete equipment of these forts<sup>2</sup>; but at that time, according to his estimate, there were in Virginia only about thirty "great and serviceable" cannon altogether. Thirty had been recently sent out from England; but unfortunately, the larger number of these had been lost or ruined when the ship transporting them took fire and was destroyed.<sup>3</sup> Cuthbert Potter, in a petition to the General Assembly stated that he had, in March, 1673, expended one hundred and three pounds sterling in paying all the charges for the freight of forty-four "great guns," and the munitions of war accompanying them; and an order was accordingly issued that he should be reimbursed out of the fund accumulated either from the tax of two shillings imposed on each hogshead exported, or from the fort duties collected by the committees of the associated counties.<sup>4</sup> In 1685, there were lying in Fort James on the York and at Jamestown twenty whole culverins, seven twelve-pounders, eleven demi-culverins, some of iron and some of brass, and four sakers. In addition, there were at these two forts a

<sup>1</sup> British Colonial Papers, vol. xlvii., No. 105.

<sup>2</sup> Letter of Berkeley to Secretary Williamson, Oct. 3, 1673, British Colonial Papers, vol. xxx., No. 70.

<sup>3</sup> Henning's *Statutes*, vol. ii., p. 51.

<sup>4</sup> Acts, 1680, Colonial Entry Book, vol. lxxxvi.; see also British Colonial Papers, vol. lxiii., No. 11.



large quantity of balls and powder adapted for use to each set of its cannon, both great and small. There were also lying in the Rappahannock fort a few guns, but they had been so neglected that they were at this time buried in the sand.<sup>1</sup>

One of the most serious charges brought against Howard by Philip Ludwell in 1688 was that, having diverted to his own use all the fort duties, the fortifications had, during his administration, fallen into a state of decay, since there were no other sums which could be applied to them. The carriages of the heavy ordnance had been allowed to rot slowly away and the guns to tumble to the ground or to sink into the sand.<sup>2</sup> Howard, who was now in London, afterwards denied the truth of these accusations; he asserted, in his own defence, that, when he first arrived in Virginia, he had found all the platforms in a condition of great dilapidation, the carriages too much ruined by long exposure to the weather to hold up the cannon, and all the guns unfixed. As soon as the accumulation of public funds had justified it, he had sent to England, with a view to their complete restoration, a large quantity of arms damaged in the destruction of the guard-house at Jamestown by fire, whilst the remainder belonging to the Colony had been fixed by the local gunsmiths, and from time to time, as needed, distributed among the militia. He also asserted that he had gone to extraordinary pains in 1689 to repair the platforms at Jamestown and Rappahannock, to stock those forts with an ample supply of powder and ball, and to mount there

<sup>1</sup> Colonial Entry Book, 1685-90, p. 75. This fort was either the one situated on the Carter plantation in Lancaster county, or the one standing on the Wormeley plantation in Middlesex.

<sup>2</sup> Petition of Philip Ludwell, 1688, Colonial Entry Book, 1685-90, p. 271.

an adequate number of large cannon. This was not done also at Tyndall's Point and Nansemond only because the platforms of these fortifications had been finished but a short time before he took his departure from Virginia.<sup>1</sup>

Whether these claims of Howard were correct or not, the condition of the forts after his withdrawal were far from satisfactory. In 1690, the nine pieces of large ordnance lying at Tyndall's Point and Nansemond were left so entirely exposed to capture by a foreign enemy that the Council felt compelled to give orders to Colonels John Armistead and John Lear, the commanders-in-chief of Gloucester and Nansemond counties respectively, to choose a certain number of men, who were to hold themselves in readiness to obey upon the instant the summons of the gunner of each fort, and to remain on guard so long as the danger lasted. At this time, there was much apprehension lest the ordnance should be carried off by French ships-of-war.<sup>2</sup> The person in charge of Tyndall's Point was Gawin Dunbar; and in order to assure his constant presence, he had been permitted to cultivate the land attached to the fortification, and even to build a house on it.<sup>3</sup> Several of the other forts situated on tide-water were apparently left without even a gunner to watch over the considerable quantity of heavy ordnance which they still contained.

There were in Virginia, in 1690, numerous cannon,

<sup>1</sup> Howard's Defence, Colonial Entry Book, 1685-90, p. 300. The Rappahannock fort which Howard referred to was on the lower section of the river.

<sup>2</sup> Minutes of Va. Council, June 15, 1690, B. T. Va., 1690, No. xi.

<sup>3</sup> About 1693, he petitioned the General Assembly to reimburse him for the money he had spent in building this house; see Colonial Entry Book, 1680-95, p. 371.

although many of them were unmounted. At Jamestown, twelve culverins, one demi-culverin, and five sakers remained; at Tyndall's Point, one culverin, one demi-culverin, four twelve-pounders, and three sakers; and at Nansemond, six demi-culverins. Several of the guns at these forts had, during the course of the Insurrection of 1676, been spiked, and thus rendered worthless. At the small fortification erected on the Wormeley plantation to command the passage of the Rappahannock River opposite that place, there were found five brass guns and two mortars, the carriage of one of which had rotted to fragments. At Corotoman, on that stream's northern bank, there were twenty-four cannon, for the most part demi-culverins, lying in the sand near the shore, and exposed to the daily overflow of the tide from the Bay. Such was also the situation of the six large pieces of ordnance which had been carried to the fort built at Yeocomico on the Potomac.<sup>1</sup>

Nicholson, on assuming the Lieut.-Governorship of the Colony, instituted a careful inquiry into the different forts' condition, and the state of their ordnance. Among the members of the Council appointed to make a personal inspection were Colonel John Lear for the fortification at Nansemond, Colonel John Page for the one at James City, Colonel John Armistead for the one at Tyndall's Point, Colonel Ralph Wormeley for those situated on the Rappahannock, and Colonel Isaac Allerton for the one standing at Yeocomico.<sup>2</sup> This Committee was composed of the first men of that period in Virginia, and all had enjoyed a long experience

<sup>1</sup> Nicholson's Letter to Committee of Plantations, B. T. Va., 1690, No. 10.

<sup>2</sup> Colonial Entry Book, 1680-95, p. 356.



in its military affairs. Nicholson showed his characteristic zeal and energy by his unwillingness to rely wholly on the reports of others, however competent or trustworthy; he himself visited the different forts in person; and seems to have formed as unfavorable opinion of their condition as Culpeper had done some years before. He declared frankly that it was a very improper use of terms to describe them as fortifications at all; and writing again in 1691, he repeated the statement that there was no fortification in Virginia deserving the name of a military platform. He was strongly of the opinion that the only means of affording safety to the merchant vessels trading with the Colony during the course of a foreign war was to build at least one substantial fort on the banks of each of the four principal rivers. Whilst these forts would not bar the passage of the streams by a hostile ship, so great was the breadth of the rivers, nevertheless their guns, if kept in good order, would give ample protection to every vessel lying within the range of their shot. Unfortunately, Nicholson was forced to acknowledge that to erect and garrison such a series of fortifications, and maintain them in perfect shape, would require a far larger sum than the colonists were in a position at this time to raise.<sup>1</sup>

The acquisition of ammunition for the heavy ordnance mounted on the few platforms still intact was a serious problem to solve at this time. It shows the expedients which the Governor and Council were compelled to

<sup>1</sup> B. T. Va., Entry Book, vol. xxxvi., p. 29. In an address to the King, dated May 21, 1691, the Burgesses declared that there was at this time not a single fortification in the Colony strong enough to defend either the plantations or the ships trading thither; Minutes of Assembly, May 21, 1691, Colonial Entry Book, 1682-95.

have recourse to that, in March, 1690-1, the collectors of customs were ordered to report in the future the name of every person in the Colony to whom powder should be delivered by a shipmaster, so that when the occasion arose for its use in repelling an invader, it might be impressed without delay.<sup>1</sup> A few months later, the English Government, for the defence of the forts, sent over a great quantity of round shot, ladle, and sponge for large ordnance.<sup>2</sup> On the guard-ship *Dunbarton* being broken up in 1691, orders were issued by the authorities that all her guns and ammunition should be removed to the fort at Tyndall's Point, which was now in the custody of John Todd.<sup>3</sup> Only a few days afterwards, they declared that there were not enough munitions in the forts at this time to require the constant oversight of the gunners; and in consequence of the intermittent attention which these officers were expected to give as the result of this fact, the salary of each was soon greatly reduced; the gunner at Tyndall's Point, who had been paid fifteen pounds sterling a year formerly, was now paid only ten; whilst the gunner at James City received only seven pounds and a half instead of ten as before. The salary of the gunner at Rappahannock and Nansemond respectively was cut down from ten to five pounds sterling.<sup>4</sup>

The gunner's duty was, in some places, confined to a watch over the ordnance alone; this occurred wherever

<sup>1</sup> Orders of Va. Council, March 7, 1690, B. T. Va., 1690, No. 14.

<sup>2</sup> B. T. Va., Entry Book, vol. xxxvi., p. 194.

<sup>3</sup> Orders of Council, April 16, May 15, 1691, Colonial Entry Book, 1680-95.

<sup>4</sup> Minutes of Council, May 23, 1691, B. T. Va., 1691, No. 27. At this time, Gawin Dunbar was the gunner at Tyndall's Point, Edward Rawlings at James City, and Gerard Fitzgerald at Rappahannock. In 1692, the gunner at Nansemond was Benjamin Gill; see Minutes of Council, June 24, 1692, B. T. Va., 1692, No. 27.

it was thought to be safer to distribute the stores among a certain number of responsible citizens than to leave them in the fort itself. In 1691, Lieut.-Governor Nicholson issued a general order that these munitions should be accounted for by the persons to whose custody they had been consigned; but no record, it is evident, had been preserved of these persons' names, for every individual in the Colony having any knowledge of the exact whereabouts of the articles was enjoined to give information of that fact to the authorities of the county in which he resided; and an urgent command was laid upon every sheriff and every justice to make a diligent search for them.<sup>1</sup>

The fortification at Jamestown had, by 1691, fallen into a state so ruinous that it could no longer be used even as a shelter for the different stores belonging to it; and in consequence, Colonel William Browne was paid fifty shillings for providing a room for their accommodation.<sup>2</sup> The heavy ordnance had, by this time, tumbled from the rotting carriages, and was partially buried in the sand. In 1693, Andros, having been appointed Governor, interested himself actively in this platform's restoration; thirteen guns, consisting of whole and half culverins, were raised from the ground, placed on new carriages, and thoroughly cleaned, while

<sup>1</sup> B. T. Va., 1691, No. 70; see also Orders Dec. 21, 1691, in York County Records, vol. 1690-94, p. 112, Va. St. Libr. The following is from the Henrico County Records: "The Right Honble, the Lieut.-Gov.'s order of ye 8th of December last, requiring all persons in whose custody any of ye stores are which belong to ye fort at Tyndall's Point to return an acct. thereof to ye Secretary's office was this day in open Court published 1691 February"; see vol. 1682-1701, p. 330, Va. St. Libr.

<sup>2</sup> Orders of Council, May 23, 1691, Colonial Entry Book, 1680-95. In 1692, a powder house was built at Jamestown by Andros; see B. T. Va., Entry Book, vol. xxxvi., p. 241.



four others of equal size were mounted on carriages obtained from a ship. The whole formed a battery which is said to have commanded the passage of the river at this point. Andros also took steps to substitute new carriages for the old ones on which the guns at Tyndall's Point were resting, or from which they had dropped to the ground with the gradual decay of their supports.<sup>1</sup> A few years afterwards, he gave orders that a new platform should be built at this fort. This, when completed by John Hanby, was about one hundred and sixty feet in length and sixty in breadth; and for its construction, the authorities agreed to pay about forty-five pounds sterling, a sum having the purchasing power of about one thousand dollars.<sup>2</sup>

The various stores collected at Tyndall's Point for the fort's use were at this time kept, not in the fort itself, but in a house belonging to John Todd, in whose general custody, as we have seen, the fortification had been placed. This was not considered to be very safe, as the site of the house was near the river's mouth, and without means of defence in case an invading force

<sup>1</sup> Andros to Committee of Plantations, July 22, 1693, B. T. Va., Entry Book, vol. xxxvi., p. 241. Eleven of these guns, it seems, had been placed apparently under the platform by the order of Lieut.-Gov. Nicholson; see Minutes of Council, Aug. 16, 1692, Colonial Entry Book, 1680-95.

<sup>2</sup> Hanby is found petitioning for his money as late as May 3, 1699. On that date, Edmund Jennings and Matthew Page were ordered by the Council to make an inspection of the platform; see Minutes of Council, May 3, 1699, B. T. Va., vol. liii. Blair, who disliked Andros, and was also anxious to obtain for the use of the College the money designed for these fortifications, derided the Governor's efforts. "I have never heard one man that pretended anything of fortifications," he declared, "that upon sight of these works did not ridicule them as good for nothing but to spend money." He also asserted that the guns at Jamestown were so placed that they were no defence to the town; see Blair's Memorial, Perry's *Historical Coll.*, Va., vol. i., p. 14.

approached from the direction of the Bay. A storehouse, constructed entirely of brick, belonging to Edmund Jennings, who lived within convenient distance of the fort, was finally chosen as a magazine; and hither all the munitions previously sheltered by Todd's roof were, with the exception of a small quantity reserved for the forts at the Point and at Nansemond, transported in a sloop.<sup>1</sup>

How heavy was the charge of keeping the forts even in a partial state of preservation was shown by the sums of money paid out to the various persons who apparently had been the chief instruments in carrying out Andros's general scheme of restoration. Ralph Wormeley, for instance, received, in 1694, about forty-one pounds sterling for the carriages he had provided for the heavy guns at Jamestown, and also for a considerable quantity of timber, probably used by him in the construction of the platform there. For manufacturing sixteen carriages for the cannon lying in the fort at Tyndall's Point, Thomas Palmer was allowed sixty pounds sterling; whilst Colonel Browne was paid about three pounds sterling for continuing to furnish store-room for the ammunition kept at Jamestown, although it would appear that the magazine built there by Andros was still in existence. Probably, however, it was not used, because, as Commissary Blair charged, not being protected by a gun, it might easily have been seized by any enemy, foreign or domestic.<sup>2</sup>

In March 1694-5, the Council having ordered Colonels William Byrd and Edward Hill to make a personal inspection of the old fort at Jamestown, they reported

<sup>1</sup> Orders of Council, July 6, 1692, Colonial Entry Book, 1680-95.

<sup>2</sup> Blair's Memorial, Perry's *Hist. Coll., Va.*, vol. i., p. 14; Minutes of Council, July 18, 1694, Colonial Entry Book, 1680-95.

that the brickwork had gone so completely to ruin that it was incapable of repair; and that the whole structure was in the final stage of decay. The Council thereupon directed that it should be no longer used as a fortification; and they even recommended that it should be at once demolished.<sup>1</sup> The fort on the Wormeley plantation, situated on the banks of the Rappahannock, had already been abandoned. The guns had been pronounced to be useless, not only because they had been seriously damaged, but also because they were not of a calibre to command the passage of the stream; and, in consequence, an order had been given that they should be removed to Jamestown.<sup>2</sup> The fort at Nansemond was still maintained, for, in 1695, James Peters was paid forty-seven pounds sterling for building carriages for the heavy guns belonging to that fortification, and also for throwing up an earthwork there. In the same year also, Peter Beverley received five pounds sterling for mounting eight large cannon in the fort situated at Tyndall's Point; and this number was increased in 1696, in which year, Captain Thomas Ballard obtained a warrant for a considerable sum as remuneration for transporting thither eight pieces of heavy ordnance. He also supplied a large quantity of tar and timber.<sup>3</sup>

Although the brickwork of the old fort at Jamestown had been levelled to the earth, an effort was nevertheless made to maintain a fortification at that place. The guns seem to have been removed from their former position, and after the carriages supporting them had been mended or entirely renewed, the heavy ordnance

<sup>1</sup> Orders of Council, March 6, 1694, Colonial Entry Book, 1680-95.

<sup>2</sup> Minutes of Council, July 20, 1694, Colonial Entry Book, 1680-95.

<sup>3</sup> Minutes of Council, June 4, 1695, Colonial Entry Book, 1680-95; June 15, 1696, B. T. Va., vol. liii.





was mounted, probably on an earthwork like the one recently thrown up at Nansemond.<sup>1</sup> The only use to which the cannon were put appears to have been in firing salutes; but so great was the waste of powder resulting that the gunner, Edward Ross, recommended that several small iron pieces belonging to James Shirlock, who resided at Jamestown, should be purchased for this purpose; and this was finally done, as assuring an important saving in the expenditure of ammunition.<sup>2</sup>

From the preceding account of the state of the different forts situated along the borders of tide-water, it will be seen that, as the century drew towards a close, there was an increasing popular disposition to allow these fortifications to fall into complete decay; and whilst from time to time, the authorities undertook to make the necessary repairs, nevertheless this was not done in a manner to ensure any real permanency. The true explanation of the forts' defective condition is to be found in the people's conviction, which had been growing for many years, that these fortifications were incapable, even when in the highest state of efficiency, of serving the purpose for which they were designed. The results of nearly one hundred years' experience were summed up with remarkable force by the Governor and Council, in 1690, in passing upon the reports of two committees, composed of such conspicuous men as William Byrd, Edward Hill, Matthew Page, and Edmund Jennings, who had just pronounced the two principal sea forts in Virginia, those of Jamestown and Tyndall's Point, to be "wholly useless and unservice-

<sup>1</sup> See Minutes of Council, June 4, 1695, Colonial Entry Book, 1680-95.

<sup>2</sup> Minutes of Council, April 28, 1696, B. T. Va., vol. liii.

able." These distinguished officials declared, first, that in the light of their own observation, and that of their predecessors, they believed it to be impossible for any fortification, however strongly built, fully manned, or completely armed, to protect any part of the Colony from invasion by sea, because, the shores everywhere lying unusually low, it would always be easy for the enemy to disembark at some undefended plantation, and marching forward, seize the fort by an assault from the land side, and having once got possession of it, use it as the base for a further attack upon the surrounding country; secondly, that the people of Virginia were entirely too poor to bear the heavy and constant drain on their resources that would be rendered necessary by a policy of building and maintaining a series of fortifications along the coast; thirdly, that seditious persons residing within the Colony would not be overawed and kept in subjection by the mere presence of such fortifications, but, on the contrary, would perhaps be induced to rise by the fact that each fort would constitute an arsenal from which they would be able by force to procure a large supply of arms otherwise beyond their power to obtain; fourthly, that the forts would not always serve even the purpose of magazines, as it was already considered dangerous to leave powder in them, except under a powerful guard, for fear lest it might be carried off by the pirates frequenting those waters, or blown up in the course of one of those terrifying storms of thunder and lightning which swept over the country in spring and summer; fifthly, that the breadth of all the rivers below the flow of the tide was too great for any forts the Colony was able to build to command the channels, and therefore, they would afford no real protection to merchantmen trading in

these rivers in case the foreign enemy's approach was sudden and unexpected.

Under the influence of these different reasons, the Governor and Council earnestly recommended that all the fortifications in Virginia should be allowed to sink gradually into total ruin.<sup>1</sup> Such a recommendation always had the people's hearty approval; for the real sufferers in case of an attack from the sea, as already pointed out, would not be so much the owners of the plantations as the owners of the ships trading with the Colony; in other words, it was not so much the Virginians themselves as the English merchants who were likely to be damaged. The country lying along tide-water was as yet too much devoid of villages and towns to offer any strong inducement to an enemy to land and commit serious ravages. A house, barn, or cabin,—buildings easily and quickly replaced,—might here and there be destroyed in pure wantonness, but cattle in any great number could not be driven off to a man-of-war; and there was no treasure or valuable booty in large quantities to be carried away. The attention of every hostile vessel arriving in the waters of the Colony was always turned to the ships belonging to the English merchants, which were moving from anchorage to anchorage in the different rivers. The blow fell always upon them; rarely upon the plantations also. Such being the case, the indisposition of the people of Virginia during the Seventeenth century to impose heavy taxes on themselves in order to raise numerous fortifications along the line of coasts becomes intelligible enough. It was better, they argued, that the merchants should, at long intervals, incur a great loss than that the people should

<sup>1</sup> Minutes of Council, May 9, 1699, B. T. Va., vol. liii.



have to bear so grievous a burden all the time. The number of Virginians who forwarded their tobacco to England and thus ran the same risk was too small to modify this view to any great extent.

## CHAPTER XIV

### Foreign Invasion: Guard-Ships

WHEN the Governor recommended, as in 1699, that all the forts should be allowed to go to ruin, it may be taken for granted that he had either come to disregard the hostile influence of the English merchants, or he had decided that there were some means besides a coast fortification which would afford protection to the trading ships, and that, in this view, the owners of these ships fully concurred. During many years, the opinion had been growing in the Colony that the most effective way of defending the merchantmen, and preventing an attack on the plantations along tide-water, was for the English Government to establish a guard-ship in the Chesapeake not far from the Capes. This opinion was entertained all the more favorably as the expense of such a ship would be comparatively small, and would fall chiefly either on the merchants or the English Government itself. As early as 1666, Berkeley and his Council had united in declaring that, in consequence of the width and extent of the rivers, a single guard-ship would prove more successful in the defence of the coast and the trading vessels than all the fortifications which the limited means of the people would allow them to erect.<sup>1</sup> Berkeley advocated the same plan more than once. "All the forts

<sup>1</sup> Robinson Transcripts, p. 118.

we can build," he frankly wrote to Arlington, "though never so strong, will not absolutely answer what they are designed for. The entrance into the Province is so large that any enemy's ship may ride out of all possible danger of the greatest cannon in the world." A frigate-of-war alone, he asserted, would offer a barrier incapable of being overcome unless confronted by such a force as an enemy was unlikely to send out to those remote waters.<sup>1</sup>

A letter of Thomas Ludwell written in the following year, shows that the Virginians in an emergency could devise guard-ships of their own. "We are in a flat open country," he wrote, "full of great rivers, impossible to be totally secured from the incursions of the enemy . . . to prevent such mischief, we have ordered a fleet of boats and shallops in every river, well manned and armed, to be ready on all occasions to attend the motions of an enemy, and to fight them if they seek to land."<sup>2</sup> England was now at war with Holland. In anticipation of that war, or soon after it began, the English Government dispatched to the Colony the frigate *Elizabeth*, which seems to have been the first of the guard-ships stationed in the waters of Virginia. The second, commanded by Captain Roger Jones, who had come out with Culpeper as a soldier, was a sloop of sixty tons burden equipped with ten guns. Hired by the Governor on the Council's recommendation, its maintenance imposed a heavy charge on the public; for instance, apart from the cost of its stores and victual, its captain alone was paid four pounds sterling every month; the mate and carpenter together the same sum; whilst each of the twelve common seamen received

<sup>1</sup> British Colonial Papers, vol. xx., No. 117.

<sup>2</sup> *Ibid.*, vol. xxi., No. 18.



one pound and four shillings,—a total outlay falling little short in purchasing power of five hundred and fifty dollars in modern currency.<sup>1</sup> Jones was in time suspected, not only of defrauding the Colony by drawing the wages of twelve sailors when he had only eight in his service, but also, which was a far more serious crime, of acting in collusion with pirates and ship-masters seeking to evade the Navigation Laws. By the large sums thus acquired, he is said to have laid the foundation of a very valuable estate. His device, it appears, was to strike his colors to the vessels of pirates, his motive in doing which they soon came to understand; and it was then their habit to dismiss him with a great quantity of French wines and other costly goods.<sup>2</sup> In 1683, the vessel was ordered to be discharged, and the stores it contained to be returned to Middle Plantation.<sup>3</sup>

The same year, Howard urged the English Government to dispatch to Virginia a frigate for use in repressing illegal traders, capturing pirates, and discouraging all persons who might be disposed to rebel.<sup>4</sup> Apparently, a favorable response was given, for, in 1684, the royal ship *Quaker*, under Captain Thomas Allen's command, is found cruising in the waters of the Colony. During that year, Nicholas Smith's residence, situated in Isle of Wight county, was robbed by Roger McKeel and other privateers. The *Quaker* was sent out to scour Chesapeake Bay in search of them; and as a support, should she need it in the expected encounter,

<sup>1</sup> Colonial Entry Book, 1681-5, p. 162; 1680-95, p. 157.

<sup>2</sup> Letter of Council to Committee of Plantations, B. T. Va., Entry Book, vol. xxxvi., p. 215.

<sup>3</sup> Colonial Entry Book, 1680-95, p. 184.

<sup>4</sup> *Ibid.*, 1681-85, p. 184.

two sloops, fully manned and completely armed, were ordered to accompany her.<sup>1</sup>

The *Deptford* was also stationed in Virginia at this time. Howard spoke with great disdain of the commanders of these two vessels. "My footmen," he was reported as saying, "would make as good captains as they." When charged with this contemptuous speech, he replied vaguely that he had treated the two officers "with all suitable respect"; and that they had always had the run "of his house and cellar."<sup>2</sup> From the testimony of others, it would appear that the captain of the *Deptford*, John Crofts by name, was quite as unworthy as the Governor represented him to be. Some of the scenes which took place on board of that vessel between him and his wife were marked by the most disgraceful violence. One witness swore to the fact that they were constantly quarrelling and fighting in their cabin; that, on one occasion, in her ungovernable rage, she hurled about the room all the looking and drinking glasses; that, on another, she scattered over the floor the burning embers which she had dragged from the hearth, so that the sailors were in deadly fear lest a spark should reach the powder magazine and blow up the vessel. When one of the officers remonstrated with her on such dangerous conduct, she denounced him as a rascal, and shouting out that she would break his head, threw a can of water in his face. Her husband joined in the altercation, and striking the officer with his cane, and continuing to beat him until he was "black and blue all over," ended by knocking him down. At another time, Captain Crofts, being quite drunk, his usual condition, staggered out of the cabin, sword in

<sup>1</sup> Colonial Entry Book, 1680-95, p. 210.

<sup>2</sup> British Colonial Papers, vol. lxi., No. 60, I.; vol. lxii., No. 20, II

hand, and in a raging humor, and swearing loudly at the watch, threatened to kill the whole number, and was so menacing that some of them took to the water to avoid personal injury. "Belching out a thousand oaths," he exclaimed that he had "come into the country to get an estate, and that he would get one before he left."<sup>1</sup>

That Crofts was determined to get this estate by dishonest means, if necessary, was shown by his conduct on several occasions. In 1687, he boarded the *Daniel and Elizabeth* just as it was about to pass out though the Capes on its voyage to England. Having ordered the captain to stop the ship, he refused to permit her to continue on her way until he had received bills of exchange for large amounts, and had also taken out of her hold considerable quantities of valuable commodities and merchandize, without even requesting leave.<sup>2</sup> On another occasion, he detained Captain Samways under the same circumstances, and only suffered him to proceed on his offering as a bribe eleven yards of silk, two silver dishes, a silver tobacco box, and a greatcoat.<sup>3</sup> Informed of these dishonest acts, Howard summoned Crofts to Jamestown to answer for them. The warrant was delivered to him at Wicomico in Maryland by the deputy sheriff of Westmoreland, who was accompanied by several assistants. On its being handed to him, he looked fiercely at the person presenting it and exclaimed: "Sirrah," and no other form of acknowledgment could be got from him except threats to break the heads of the officers and to put

<sup>1</sup> British Colonial Papers, vol. 1x., No. 52, I., II., III., VIII., XII., XIII.

<sup>2</sup> British Colonial Papers, vol. 1x., No. 52, VIII., XII.

<sup>3</sup> *Ibid.*, vol. 1xii., No. 20, X.



them in the bilboes. When one of them demanded a receipt for the summons, Crofts, shaking his cane at him in a violent manner, ordered him and his companions to go on board of the ketch, which was riding near. The upshot of the interview was the return of the letter with an insulting and obscene message for the sheriff of the county.<sup>1</sup> The end of Crofts was in keeping with the violence of his life, and followed perhaps from the carelessness encouraged by his intemperate habits,—his ship was overturned by one of those sudden squalls so common in the Chesapeake Bay, and he and eight of his sailors were drowned.<sup>2</sup>

At this time, the *Dunbarton* was also stationed in the waters of Virginia, but in the course of 1691, being unserviceable and lying on the beach, she was broken up and her guns and stores removed, as already stated, to the fort at Tyndall's Point. Nicholson now requested the English Government to send out to the Colony a frigate and a fire-ship.<sup>3</sup> Howard condemned the suggestion of a fire-ship on the ground that such a vessel could not be made useful in the broad rivers of Virginia; and in its stead, he recommended that the frigate should be supported by a well manned and thoroughly armed sloop.<sup>4</sup> The *Wolf* arrived in 1691, under Captain Purvis's command, but she soon ran her keel on the bottom at a shallow point in the Bay between the mouths of the York and Rappahannock, and was only saved by the exertions of a large number of persons, who had been impressed to pull her back

<sup>1</sup> British Colonial Papers, vol. 1x., No. 52, VIII.

<sup>2</sup> B. T. Va., Entry Book, vol. xxxvi., p. 9.

<sup>3</sup> *Ibid.*, vol. xxxvi., p. 29; see also Appeal of Council to Commissioners of Plantations, B. T. Va., 1690, No. xi.; 1691, No. 16.

<sup>4</sup> B. T. Va., 1691, No. 19.

into deep water. Purvis had made liberal promises of reward to those assisting him in this emergency, but forgot to keep them when his vessel was once more riding in safety. This dishonesty raised such a great commotion in the Colony that the fears of the Lieut.-Governor and Council were aroused lest it should lead to "dangerous consequences to the peace" of the community; and they earnestly appealed to the Committee of Plantations to provide the money to pay whatever should be shown to be due.<sup>1</sup>

In the year in which the *Wolf* ran aground in the Chesapeake Bay and came so near to going to pieces, the *Henry Prize*, another guard-ship, arrived in Virginia. Captain Finch, who was in charge of this vessel, was instructed to devote his attention entirely to defending the Colony by sea, but, in doing so, to hold himself, at all times, in readiness to carry out the commands of the Virginian authorities. As soon as he reported his presence, the Governor directed him to station his ship at a point opposite the mouth of the York River, and to make an examination of all merchantmen passing by, either on the inward or the outward voyage. On a hostile vessel appearing, should he conclude that it was too formidable to be attacked, then he was to retire under the protection of the guns of the fort at Tyndall's Point, and to remain there until the enemy had vanished.<sup>2</sup> This

<sup>1</sup> B. T. Va., Entry Book, vol. xxxvi., p. 103. "Mr. William Churchill, having at the last court made proclamation that all persons which did service on board their Majesties' ship *Wolfe* should repair to him, and be paid for ye same and all persons not satisfied repair to this court, etc."; see Middlesex County Records, Orders Jan'y. 1, 1693.

<sup>2</sup> Minutes of Council, 1691, B. T. Va., No. 59; see also Minutes, Oct. 22, 1691, Colonial Entry Book, 1680-95.

frigate seems to have been very poorly manned, and even lacking in the proper number of masts.<sup>1</sup> As many deserters from the crews of trading vessels were, at this time, wandering at large in the Colony, the Council ordered the justices of the peace for the different counties to arrest these vagabonds, and to send them under armed escort to Tyndall's Point for enlistment on board of the guard-ship, now lying there in need of such a complement.<sup>2</sup> Captain Finch, like all his predecessors, was strongly disposed to condemn the orders of the Virginian authorities, although he had been expressly made subservient to them. It was not long before the Council lodged a complaint against him of gross insubordination and great dilatoriness of movement; and they also condemned his ship as a "heavy sailer and ill roader,"—a statement which seems to lessen somewhat the force of the accusation brought against the captain personally, as he was, no doubt, in some measure, handicapped by a very inferior vessel. So inferior, indeed, did it prove to be, that the Council prayed the Committee of Plantations to substitute for it one sounder and more useful.<sup>3</sup>

Andros was instructed by the Lords of the Treasury, in 1694, to hire several vessels, not to exceed forty tons in burden, which, sailing up and down the coast of Virginia, were to be constantly on the lookout for hostile ships and illegal traders. They were to be placed under the command of officers specially chosen for their knowledge of that coast, and for their experience in managing such boats; and in order to stimulate their zeal in the performance of their duties, one third of all

<sup>1</sup> B. T. Va., Entry Book, vol. xxxvi., p. 101.

<sup>2</sup> B. T. Va., 1692, No. 123.

<sup>3</sup> Minutes of Council, July 6, 1692, Colonial Entry Book, 1680-95.



the sums to be obtained from forfeitures for violations of the Navigation Acts was to be bestowed upon them. In accord with these instructions, Andros soon hired a sloop of the prescribed burden and manned it with ten seamen; but as the forfeitures for violations of the Navigation Laws had already been granted to the College of William and Mary, permission was sought through Ralph Wormeley, the Secretary of the Colony, to use, for the benefit of the sloop's officers and crew, a certain proportion of the tobacco accruing from the quitrents.<sup>1</sup>

In 1697, the *Swift*, under Captain Nathaniel Bostwick's command, seems to have been the only guard-ship stationed in the waters of Virginia. But she soon came to grief, for in passing along the coast at the hour of high tide, she ran aground, and on the tide receding, was left on the shore, from which it was found impossible to remove her when the flood returned; and she became finally a complete wreck.<sup>2</sup> The *Swift* was succeeded by the *Essex Prize*, a ship of a single deck armed with sixteen guns, and manned by sixty seamen, a very large complement. She was under the command of Captain John Aldred, who complained that she was fitted to hold her own against an enemy only so long as the men were able to retain possession of her one deck; driven from that, they would be forced to surrender, as there was no other section of the ship from which they could continue to keep up their fire.<sup>3</sup> Aldred gave as little satisfaction to the Governor and Council

<sup>1</sup> Minutes of Council, November, 1694, B. T. Va., Entry Book, vol. xxxvi., pp. 290, 297.

<sup>2</sup> *Ibid.*, March 7, 1697-8, B. T. Va., vol. liii. An inventory of her properties stored at Colonel William Wilson's house at Hampton will be found in B. T. Va., vol. viii., Doct. 37.

<sup>3</sup> See letter of Aldred, July 30, 1699, B. T. Va., vol. lii.

as his predecessors; they charged that his ownership of stores in different parts of the Colony exposed him to the temptation of bribes and preoccupied his attention; that he kept his vessel too long in James River, and failed to obey an order to leave for a cruise in other waters demanding as close inspection; and, finally, that, lodging his seamen, during the greater part of their time, on shore, he permitted them to wander in every direction at their will, to the serious objection of the planters on whose property they were making constant depredations.<sup>1</sup> Aldred, in his own defence, urged that his ship was so leaky in the bow that he was unwilling to venture out in very bad weather for fear lest the water, rushing in, should destroy all the stores; and that, in reality, the vessel's entire structure was in need of repairs not improbably beyond the skill of the carpenters of Virginia to make. All the gun carriages too required renewing, and the supplies replenishing. Aldred had already complained that his seamen, doubtless influenced by these conditions, were constantly abandoning the ship and flying to remote parts of the Colony, where they entered the service of merchantmen ready to set sail for England.<sup>2</sup> In order to assure him sufficient men to take the place of these deserters, Nicholson had authorized him to impress one sailor from every trading ship arriving in Virginia with a complement of seamen exceeding fifteen in number.<sup>3</sup> At one time, the

<sup>1</sup> Letter of Nicholson to Captain Aldred, Oct. 25, 1699, B. T. Va., vol. lii.

<sup>2</sup> Letter, April 17, 1699, B. T. Va., vol. lii.

<sup>3</sup> Letter of Nicholson, Jan'y 29, 1698-9, B. T. Va., vol. lii. Aldred, it appears, had previously, on his own responsibility, been forcing Virginians into his service. Mary Rickets complained that he had impressed one Sykes "an inhabitant of this country who was shortly to be married to her"; see Letter of Nicholson, Sept. 15, 1699, B. T. Va., vol. lii.

Governor had become so impatient with his slowness that he had sent him word that, unless he should be ready for a cruise by the end of two weeks, he must return to Jamestown, anchor his vessel, and discharge his crew, as it was wrong to put the King to so much expense when so little of importance was accomplished.<sup>1</sup>

The *Shoreham*, under the command of Captain William Passenger, arrived from England in 1699, and soon proved itself to be the most capable guard-ship dispatched as yet to Virginia. Its chief officer brought with him instructions, first, to obey all orders which the Governor should give him with a view to ensuring the Colony's safety; secondly, in case of a vacancy among his officers, to promote any person under him whom he deemed the best fitted for the position; and, finally, should the number of his men run short, not to impress others on his own responsibility, but to apply to the Governor for recruits to make good the deficiency.<sup>2</sup>

Nicholson ordered Captain Passenger to begin at once to cruise in the Chesapeake, and off the entrance to the

<sup>1</sup> Letter of Nicholson, Jan'y 4, 1699, B. T. Va., vol. lii. Aldred, on one occasion, declined to attack the pirates on the ground that his vessel was not sufficiently manned; see Letter of Nicholson, April 19, 1700, B. T. Va., vol. lii.

<sup>2</sup> Instructions to Capt. Passenger, Nov. 16, 1699, B. T. Va., vol. viii., Doct. 18. Less than one year later, Passenger, with the consent of Nicholson, was seeking to impress sailors from merchantmen. "I cannot omit giving your excellency," he wrote in April, 1700, "an account of those many threats of ye law and other senseless language I met with by executing your warrant, and taking one man out of fifteen from the *Canterbury*, by one Tregenny, ye master of ye said ship, and he valued not ye order, there was no law for pressing, but if his ship came to damage, he would lay it to my charge, which I know not but this young uppish spark, which is fitter for a school than be a master of a ship, may either through wilfulness or ignorance, run the ship ashore, so I shall be liable to be laid in jail fast, etc.," B. T. Va., vol. viii.



Capes, and never to remain in harbor longer than could be avoided, as this would offer illegal traders an opportunity to escape to sea, and pirates to attack merchantmen without interference. He was directed too to procure from England all the provisions he would need for the coming year, as there was a prospect that victual would run short in Virginia; and also to purchase there all his stores, as they could only be obtained in the Colony at an extravagant price.<sup>1</sup> The Council recommended that a small sloop should be bought to serve as a tender to the *Shoreham*, so that the latter vessel, being thereby more conveniently supplied with wood and fresh water, might not be compelled to discontinue cruising even for a short time. Such a sloop, it was urged, having a light draught, would be able to pass into shallow creeks and inlets which the larger ship could not venture to enter, and thus lurking pirates could be the more easily and quickly detected. It might also be fitted out as a fire vessel, should any occasion promise to make it effective in that character. A sloop was bought, and no doubt proved to be of great use.<sup>2</sup>

<sup>1</sup> B. T. Va., vol. viii., Doct. 18.

<sup>2</sup> *Ibid.*, Doct. 18.

## CHAPTER XV

### Foreign Invasion: European Foes

WHILST the guard-ships were designed in part to enforce the Navigation Laws by summary seizures of all ships seeking to evade them, the forts situated along the inner coast line were erected for the single purpose of affording protection against foreign invasion. Who were the foreign enemies causing the colonists the greatest alarm? From the foundation of the earliest settlement, the inhabitants of Virginia were, from time to time, apprehensive of an attack by some European foe. The site of Jamestown was chosen principally because it offered many advantages in resisting an assault, should one be made; and the determination to maintain a fort at Point Comfort, which, as we have seen, continued so long, had its origin in the impression that a fortification on this spot would, by commanding the channel, bar the further progress up the river of any hostile vessel seeking to pass. It was for many years confidently expected that such a fortification here would ensure the absolute security of the plantations lying above. Before the fort was finished, it was the Spanish nation that the people dreaded the most, for it was well known to all that that nation, claiming the whole of Virginia, had, in menacing language, protested against its colonization by the English. Apprehension lurked in the first settlers'

minds lest the horrible massacre by which a Spanish army had destroyed the Huguenots seated at Fort Caroline in Florida should be repeated at any hour on the banks of the Powhatan. On several occasions, the alarm was raised at Jamestown that Spanish ships were actually coming up the river; and indeed, during those early years, the first sight of a sail glimmering remotely on the bosom of the stream as it expanded towards the south caused exclamations of doubt, suspicion, and fear among the spectators. Every man was ready to spring to arms should it be announced from the lookout that a Spanish vessel was really approaching. No such vessel ever appeared, and no Spanish soldier entered the Colony except as a spy; but as late as 1626, the authorities were instructed by the English Government to expect daily the "coming of a foreign foe," and to exercise extraordinary precautions in allowing persons to go on board of a newly arrived ship, as, under the disguise of common traders, enemies might find their way into the heart of Virginia, and then casting off all pretension of harmless designs, overthrow the plantation.<sup>1</sup>

The wisdom of this instruction deeply impressed the minds of Yeardley and his Council, to whom it was given. At a meeting held in January of the same year, they considered, with great care, all the dangers which might arise on an enemy's landing, should no plan of action looking to repelling him have been adopted beforehand. An order was despatched to Captain William Tucker, stationed at Elizabeth City, that, so soon as such a number of suspicious ships should come in sight as to arouse his apprehension, he was to send a messenger to Jamestown to announce their arrival; afterwards, he

<sup>1</sup> Instructions to Yeardley, 1626, Robinson Transcripts, p. 46.



was to proceed in all haste to gather up the cattle, women, and children and to remove them to Mathews Manor; and, finally, he was to be ready to carry deep into the woods whatever victual might be of service to the enemy were it left behind to fall into their hands. Should any person be detected parleying with, or making signs to them, he was to be tried by a court-martial, and if found guilty, led out to immediate execution. Should the foe be one with whom the local militia could successfully cope, then the commander was to be slow in setting fire to the planters' houses in order to prevent that foe from occupying them. He was to be instructed to "lose them by degrees"; that is to say, to burn them down only when their seizure appeared to be inevitable.<sup>1</sup>

Such was the spirit which would have animated the Virginians of these early times had the Spaniards stolen into James River and attempted to ravage the land with sword and torch; such were the provisions for defence had an attack been made by them, however suddenly and unexpectedly. When the fleet sent over by Parliament, in 1651, to overawe the population, arrived, it met such a formidable show of resolution and force that far more favorable terms of surrender were granted than the Commissioners themselves perhaps had anticipated offering. Although all were ready at a moment's notice to resist invasion, the exemption from it for so many years had the natural effect of lulling the inhabitants into a feeling of security; by the middle of the century, apprehension of a Spanish attack had entirely passed away; and no other attack was now to be expected except from an enemy against whom the English had proclaimed open war. As the French and

<sup>1</sup> Robinson Transcripts, p. 59.

Dutch, unlike the Spaniards, did not regard Virginia as a part of their territory, the danger of a furtive though deadly assault by them without a previous announcement to England that hostilities had begun, was not within the range of probability. Information of a declaration of war by either of these two nations was certain to be sent to the Colony by the English Government; and should the Colony be found unprotected when invasion came, it would not be from any lack of warning. Nevertheless, there was observed among the Virginians a disposition to minimize the prospect of an attack even when the news had reached them that the Mother Country was involved in war. Berkeley noticed this feeling on their part in 1666 when hostilities with the Dutch had been under way for some time; writing that year to Secretary Arlington, he declared that they "lived after the simplicity of the past age"; and that unless immediate danger gave "their fears tongue and language, they forgot all sounds that did not concern the business and necessities of their farms."<sup>1</sup>

During the previous year, when DeRuyter was expected to descend on the coasts of Virginia, Berkeley had called out a body of fifteen hundred dragoons; and on the same occasion, had ordered several regiments of footmen, numbering twenty-five hundred men, to hold themselves in readiness to march on two days' warning. "No enemy," he justly boasted, "can make any use of their heavy guns half a mile within our thick woods."<sup>2</sup> These woods almost everywhere began at a short

<sup>1</sup> "As we are further out of danger," added Berkeley, "so we approach nearer to Heaven with our prayers that our sacred Majesty's enemies may either drink the sea or bite the dust"; Letter, May 1, 1666, British Colonial Papers, vol. xx., No. 63.

<sup>2</sup> Berkeley to Arlington, Aug. 1, 1665, British Colonial Papers, vol. xix., No. 86.

distance from the banks of the navigable streams; and although a foe might land, he could not pursue effectively in a country so covered with forests. All the merchantmen which happened to be riding in the waters of the Colony at this critical moment were ordered by the Governor to drop anchor opposite Jamestown, Tyndall's Point, Pungoteague on the Eastern Shore, or the forts situated on the Rappahannock, such as should chance to be the nearest. It seems to have been the plan to erect at once at each of these places, in addition to whatever fortifications already existed there, should any exist at all, a temporary platform to support a battery; and also to throw up entrenchments for musketeers. It was hoped that this combination, together with the guns of the ships themselves, would afford ample protection for the merchantmen, although, had DeRuyter's fleet really arrived in full force, it is not probable that it would have found any serious difficulty in destroying these vessels. Berkeley was requested by the Council to procure from England at the first opportunity all the ordnance which the new platforms would require; and he was also impowered to ask the King for authority to take from every trading vessel reaching the Colony at least two cannon. These heavy guns, should the King consent, were either to be restored as soon as the ships were ready to return oversea, or paid for in full from the income accruing from the tax of two shillings on each exported hogshead.<sup>1</sup>

The following year (1666), DeRuyter not having appeared in the interval, the fleet of merchantmen assembled just before setting sail in a body to England; and Berkeley having marshalled the whole number into

<sup>1</sup> *Va. Maga. of Hist. and Biog.*, vol. v., p. 23.



a single squadron, appointed three of the captains respectively admiral, vice-admiral, and rear-admiral. He ruefully admitted afterwards, however, that three "well prepared men of war" could easily have destroyed or put to flight this entire fleet.<sup>1</sup>

Within a few weeks, a Dutch man-of-war was sighted as she passed in between the Capes. General Richard Bennett was at this time attending a sitting of the Council at Jamestown. Being the commander-in-chief of the district south of the James River, he was instructed to summon at once all the officers and justices residing within the bounds of that district to appear at such places as he should name, and there take prompt steps to secure boats and sloops for the crews to be formed to watch the enemy's movements and, if possible, to prevent his committing depredations on land. Bennett was fully impowered to impress all the smiths and carpenters he should need to repair his vessels, and to seize cordage, sails, and whatever else he should require. The orders given to the senior officers of the districts embracing York county and the Eastern Shore respectively, were the duplicates of those given to Bennett.<sup>2</sup>

These precautions do not seem to have availed very much, for by the tenth of July, the Dutch man-of-war had succeeded in capturing two merchantmen. So soon as he received news of this fact, Berkeley ordered Major Powell, who was in command of twenty men at Point Comfort, to bury all the ordnance lying at that place at least four feet deep, and afterwards to remain on the spot to prevent the enemy from landing and finding the guns. Colonel Yeo, who was also in com-

<sup>1</sup> Berkeley to Arlington, May 1, 1666, *British Colonial Papers*, vol. xx., No. 63.

<sup>2</sup> Robinson Transcripts, p. 117.

mand of twenty men stationed at Elizabeth City, was directed to relieve Powell in case he should need aid; and in his turn, Powell was to relieve Yeo, should he also require assistance.<sup>1</sup>

No further captures seem to have been made by this vessel, but in the course of the following year (1667), four Dutch men-of-war, armed altogether with one hundred and fourteen guns, appeared off the Capes. At this time, twenty merchantmen were lying in the waters of the James and York. Had they been able to combine their strength, it is not improbable that they could have defeated even this formidable array of hostile ships, but separated as they were, the chance of doing so was very small. The Dutch first destroyed the guard-ship *Elizabeth*. This was accomplished by means of a fire-ship consisting of a captured trading vessel. The task was not a difficult one, as the *Elizabeth*, being without masts and in a very leaky condition, was unable to leave her anchorage, and after she was struck was soon consumed; but not until ten brass and twenty-seven iron guns had been saved by her crew. Having destroyed this vessel, the Dutch man-of-war went in search of the merchantmen lying in James River, some of which they were able to capture as soon as they came up with them; but some they were forced to pursue for a great distance before they were successful in overhauling them. While the enemy was thus engaged, Berkeley sent Thomas Ludwell in haste to York River with orders to the chief officers of the merchantmen riding in that stream to assemble their ships at once, and hold them in readiness, not simply to resist, but to make an attack. Ludwell, however, soon saw that the captains were in a state of panic, and

<sup>1</sup> Robinson Transcripts, p. 116.

that, unless encouraged by the Governor's influence and example, would never consent to go to the assistance of the distressed merchantmen in James River. Berkeley was at once informed of this, and although, at the moment, busy in strengthening the fortifications at Jamestown, he hurried to York; but in spite of his urgent and even angry remonstrances, he could only prevail on the officers to go after the enemy by promising that the owners of the ships should be indemnified in case any of the vessels were sunk or captured, and that the contents of any man-of-war they might seize should belong to the officers and sailors alone. All the seamen who could be recruited from on shore, as well as all the ordnance which could be gathered up, were added to the crews and armament of the fleet of merchantmen. Under no circumstances did the passionate but brave old Governor appear to more advantage than in just such an emergency as had now arisen. He insisted upon placing himself in chief command of the vessels; and to hasten their departure, went on board of the flagship accompanied by five members of his Council and by a band of forty gentlemen representing the principal families of the Colony. It was estimated that the force under his orders numbered as many as one thousand men, occupying nine large vessels. They expected to be opposed by five Dutch warships with crews aggregating about four hundred men and boys. Not even the presence and authority of the impatient Governor could prick the captains on to act with promptitude; offering one excuse or another, they put off sailing for several days, although Berkeley stormed at them, and Ludwell charged them with cowardice; and when they did finally start to the assistance of the merchantmen in James River, it



was too late. The enemy had disappeared with thirteen captured vessels as prizes in their train. Five or six others they had been compelled to burn to the water's edge because they were unable to man them.<sup>1</sup>

In 1673, England being again at war with Holland, the English authorities instructed the Governor and Council to place the Colony in a state of defence, as there was reason to anticipate that several Dutch ships would be soon dispatched to ravage the plantations and destroy the merchantmen riding in the different rivers. Berkeley, having promptly appointed Sir Henry Chicheley Lieutenant-General, ordered all the major-generals and colonels to draw their regiments together. If one man possessed more guns than he could use, he was to supply a neighbor who was lacking in arms; such muskets as were found unfixed were to be fixed at once; whilst the shot and powder belonging to private persons were to be held in readiness for instant delivery to the proper officers; and so also with all accumulations of ammunition kept in the stores for sale. As the enemy was expected to make his appearance very suddenly, the commander of the militia in the vicinity of where a merchantman was lying, was directed, on the first alarm, to hurry fifty soldiers on board for its defence; and if there was more than one vessel to be protected, then each was to receive the same complement of men. On the second alarm, the remaining soldiers were to be marched at once to the nearest fort to strengthen its garrison.<sup>2</sup>

Though Berkeley was now an old man, he showed

<sup>1</sup> British Colonial Papers, vol. xxi., Nos. 61, 62.

<sup>2</sup> Robinson Transcripts, p. 259; Records of General Court, vol. 1670-76, p. 141.

remarkable vigor and energy in preparing every part of the Colony against attack. Hurrying about with all the activity of youth, he freely exposed himself by night and day, on land and water, in his zeal to animate all with his own resolute spirit; for days he is said by those who observed his conduct at this time, to have scarcely ate or slept, to the imminent hazard of his health. He was seen now on the seashore, now in the heart of the Colony, invoking, exhorting, and encouraging the officers, soldiers, and workmen.<sup>1</sup> So critical an hour was highly congenial to the bustling, impatient, and fearless qualities of the man; and for these qualities he now found a far more honorable vent than he did a few years later when the mass of the common people had been driven to rebellion by the intolerable burdens he had been largely instrumental in imposing on them. It is quite probable that the excitement of the Dutch War, followed up so soon by all the violent scenes of the Insurrection, had some influence in producing in him, after Bacon's death, that intemperate state of mind which fell little short of actual insanity. It is one of the most dramatic contrasts in colonial history that during one year this celebrated Governor should have exhibited such patriotic energy in repelling foreign invasion, and three years later, should have found himself involved in an internecine strife which his own conduct had been so powerful in precipitating.

One of the principal reasons for apprehension in 1673, when the Dutch were expected to descend on the shores of Virginia (and the same fears had been also entertained in 1667), was as to how the servants and slaves would bear themselves in so great an emergency.

<sup>1</sup> See Letter from Va. Council to the King, British Colonial Papers, vol. xxx., No. 71.

Would the turbulent element among them seek to co-operate with the enemy, or would it remain loyal to master and mistress? Berkeley himself has recorded that, when the soldiers left the plantations to defend the coasts, they did so with profound anxiety as to what might, during their absence, happen to their families and estates. There were now almost as many servants alone as there were freemen; and no better proof of the extraordinary distrust in which, at this period, that class of the population was held could be offered than the fact that its members were not permitted to join the militia at an hour when every additional man was so highly prized. No doubt, it was hoped by the planters summoned to the ranks that the servants who were well disposed and contented would exercise a controlling influence over the servants who were not, and thus assure the safety of wives and children left behind at home without other protection.

Nor were the departing soldiers' fears directed only towards the desperate or dissatisfied persons found among the servants and slaves,—there were in Virginia at this time many freemen of a very rough character, whose small estates, however fertile, did not afford them anything more than a subsistence in spite of their arduous and prolonged labors; and there was also an even larger number who were heavily burdened with debt contracted in the effort to earn a livelihood by cultivating tobacco in a poor soil. Both of these sections of the community were perhaps more restless and discontented than the lower element among the servants and slaves, who at least were supplied with an ample quantity of food. It was not unreasonable in the planters, as they went forth from their homes to repel the Dutch, to think that, should the enemy obtain



the advantage in the impending conflict, these men, though as much freemen as themselves, might be tempted to throw off their allegiance in the hope of sharing in the plunder of the country, or of bringing about in other ways some improvement in their condition.

Brave and confident as Berkeley himself was, he confessed to some misgivings as to the outcome of the war, not on account of the possible attitude of disaffected servants, slaves, and freemen, but on account of the possible attitude of the soldiers themselves when exposed to the trying uncertainties, hardships, and privations of actual hostilities. Owing to the scarcity of provisions, it would be impossible to keep so large a body of men in one place; they would be compelled to move about from camp to camp. Moreover, not having been seasoned by harsh experience to the frightful features of a real battle, the most absolute reliance could not be put in their courage when confronted with an enemy so hardened to the sound of cannon and musketry as the Dutch, known to be among the stoutest-hearted fighters in the world. These apprehensions of Berkeley proved to be wholly groundless. So active were the militia in their movements, so bravely did they face the enemy whenever he sought to make a landing, that he was forced to retire without inflicting any damage, or even securing the fresh water so much needed now by the crews of the hostile ships. The merchantmen which had failed to take refuge under the guns of some one of the forts, alone suffered, but only a few had been too slow in seeking such protection.<sup>1</sup>

The prospect of but one other invasion disturbed the

<sup>1</sup> Letter of Berkeley and Council, dated July 16, 1673, British Colonial Papers.

Colony's peace during the remainder of this century. Whilst the war which broke out between the English and French about 1690 was in progress, there was much popular apprehension lest a French fleet should ravage the coasts of Virginia and burn or carry off the merchantmen anchored in the different streams. As soon as news reached Jamestown that there was momentary danger of an attack by such a fleet, the Governor issued a proclamation appointing certain places in each of the principal rivers where the trading ships were to ride for protection. Sandy Point above Jamestown island was selected for the upper parts of the James; and a bend in the Elizabeth beyond the town site for the lower parts. In the Nansemond, the vessels were to sail up stream until they had passed the fort; in the York, they were to proceed to a bay west of the fort at Tyndall's Point; and in the Rappahannock to the neighborhood of the fort situated on the Corotoman. In all these cases, the vessels would be sheltered from pursuit by the intervening fortification. Should a merchantman, when the warning proclamation reached its captain, happen to be riding in a river on which no fort had been built, then it was to weigh anchor, and move as far up stream as the water's depth should permit; in this way, it was quite certain to escape attack, as the French men-of-war, requiring a greater number of fathoms, would be unable to follow except at an imminent risk of running aground. Minute and farsighted as these precautions were, they fortunately proved to be unnecessary, as the French, not being as bold sailors as the Dutch, made no effort to send a fleet oversea to molest the colonists.<sup>1</sup>

<sup>1</sup> B. T. Va., 1690, No. 3; see also Essex County Records, vol. 1692-95, p. 181, Va. St. Libr.

## CHAPTER XVI

### Foreign Invasion : Pirates

PERHAPS the foreign enemies most often arousing the apprehensions of the Virginians during the latter part of the Seventeenth century were the pirates, who, in these early times, made such frequent descents on the American coasts without giving the slightest warning of their approach. They were at war with all mankind, and their depredations were not preceded, as in the case of an ordinary foe, by any declaration of hostilities; they would arrive under the cover of night, carry their ravages along the nearest shores, or overhaul all the vessels they met in the course of the following few days, and then sail away into the unknown ocean; or they would land upon some outlying deserted island in order to secure water and fuel, and then, when that object was accomplished, disappear without disturbing the inhabitants of the mainland.

One of the earliest instances of a pirate ship entering the Capes of Virginia occurred in 1682, in which year such a ship made its way up the Bay as far as the mouth of the York, where it anchored, perhaps because the captain was in a state of some doubt as to whether it would be safe to run by the platform at Tyndall's Point. This, however, did not prevent him from sending up the river several boats manned by strongly



armed crews who, landing on the plantations of Mrs. Rebecca Leake and Mr. John Williams, and visiting their residences, carried off a large quantity of valuable articles. These buccaneers had found their way into the waters of Virginia with the hope that they would be able to rifle the numerous vessels, sloops, and shallops constantly passing in and out between Capes Charles and Henry. The Council, having been informed of their presence, ordered Colonel William Cole to impress a bark or ketch, twelve barrels of pork, and a full complement of men, and to start at once in pursuit.<sup>1</sup> These pirates were not captured until they had reached the coast of Rhode Island, and from thence they were brought back to Virginia in irons. Imprisoned in Middlesex county, they contrived to break out of jail and escape. Two, however, were soon overtaken, seized, and conveyed to Jamestown, and there tried and sentenced to be hanged. One of the men thus convicted was a native of Poland. Both of them managed to get away the night before the day set for their execution; but after successfully eluding recapture, returned and voluntarily gave themselves up. They declared that they were now ready to die, and that they had fled and concealed themselves for the few days they were absent merely to prepare themselves the more carefully for their approaching end. This curious speech made such a deep impression that numerous petitions begging for their unconditional pardon were received by the Governor; and he was so much in sympathy with the

<sup>1</sup> Minutes of Council, June 25, 1682, Colonial Entry Book, 1680-95, p. 129. Cole seems to have impressed the sloop belonging to a Mr. Dunbar, who, for its use, as well as for provisions supplied and services furnished, was allowed fifteen hundred and fifty-five pounds of tobacco; see Public Levy, Nov. 10, 1682, Colonial Entry Book, 1680-95.

prayer that he respited the culprits until the King should decide whether they should not be released altogether.<sup>1</sup>

In 1683, the year following these buccaneers' capture, Virginia was infested with pirates to a greater degree than usual. Secretary Spencer, writing to one of the English Secretaries of State, declared that the force mustered by some of their vessels appearing in the waters of the Colony was so strong that it would be foolhardy and headstrong in the captain of the guard-ship, which was manned by only eighteen officers and sailors, to attempt to attack them; and that all that could be properly expected of this ship was that it should be on the watch for the arrival of these "land and sea robbers," and as soon as they came in sight, carry intelligence of their presence to the nearest authorities.<sup>2</sup> It would seem that the buccaneers would sometimes endeavor to conceal their true character in order the better to hide the purposes of depredation which they had in view; and this was so notorious that the Council felt called upon in 1683 to issue an injunction to the pilots belonging to the several rivers not to serve a ship whose actions raised the suspicion that it was a piratical craft seeking for the moment to disguise itself.<sup>3</sup>

So numerous were the pirate vessels hovering in the Chesapeake about 1684, that it was found necessary to adopt regulations for the guidance of the military authorities when aiming to destroy or drive them off. A proclamation now issued by Howard provided that, as soon as a piratical ship was discovered riding in the

<sup>1</sup> Minutes of Council, Dec. 13, 1682, Colonial Entry Book, 1680-95, p. 147.

<sup>2</sup> Spencer to Secr'y Jenkins, British Colonial Papers, vol. li., No. 30.

<sup>3</sup> Colonial Entry Book, 1680-95, p. 180.

waters of Virginia, the principal commissioned officer of the district in which it was seen was to send information of the fact to the Governor, or the member of the Council whose residence happened to be the nearest; and having done this, he was to call together all the militia of the surrounding country and distribute them among the places seemingly in the greatest need of defence.<sup>1</sup> That the most energetic steps were taken in accord with these regulations to repel the buccaneers was shown by the report of Howard himself the following year: although the "pilfering pirates," he declared, had succeeded in doing some harm to the inhabitants of those parts of the Colony where they had landed, they had been pursued with great promptness, and many having been captured before they could find a refuge in their ships, the worst of the band were very soon executed.<sup>2</sup> Nevertheless, freebooters of the same desperate character continued to descend upon the coast. The difficulty of resisting them successfully was, at this time, so great that the King, in 1685, offered a general pardon to all who would abandon their unlawful life and surrender themselves to any Governor or Commander-in-chief belonging to the plantations. A limit of three months within which to submit was allowed to those pirates who, at the date of the royal proclamation, happened to be scouring the waters of the North Atlantic; and of six to those more remotely situated. After yielding themselves up to the King's representatives, they were to set out for England, in order to obtain their pardon in person, and to give security for their future good conduct. Every pirate refusing to take advantage of the opportunity afforded him to

<sup>1</sup> Colonial Entry Book, 1680-95, p. 200.

<sup>2</sup> British Colonial Papers, vol. 1v., No. 122.



relieve himself of the legal consequences of his evil occupation, was to be subject to the forfeiture of his life and estates, should he be captured.<sup>1</sup>

This proclamation does not appear to have lessened the number of piratical vessels infesting the waters of the Colony. In February, 1687-8, the guard-ship *Dunbarton* succeeded in capturing a large number of buccaneers who had come to anchor within the limits of Accomac county.<sup>2</sup> At this time, as well as later, several of the outlying islands of the Eastern Shore were the favorite resorts of these sea-robbers, for here they could always obtain fresh water, and sometimes even secure beef and pork by killing the cattle and hogs running wild in the marshes.<sup>3</sup>

In this age, there was but a narrow line of division between the pirate and the privateer. Many privateers, after preying upon the enemy's commerce, did not hesitate to rifle any ship, whether belonging to their own or a friendly nationality, which happened to cross their track. Though keeping these latter acts in the dark, the crew of such a vessel were no doubt much inclined to boast of their achievements against an acknowledged enemy. So great was the quantity of plate, coin, precious stones, the rarest silks and costliest cloths, captured by many of these so-called privateers that the accounts of their success reaching the Colony from time to time were thought by some of the Governors to tend to demoralize the population in the pursuit of their usual avocations. It was reported

<sup>1</sup> Howard issued this proclamation in Virginia. It was dated May 2, 1687; see British Colonial Papers, vol. 1x., No. 58.

<sup>2</sup> Colonial Entry Book, 1680-95, p. 270.

<sup>3</sup> See Report of Col. John Custis to Council, May 15, 1691, Colonial Entry Book, 1680-95.

in Virginia, in 1692, that a ship of this kind, which pretended to be from the Red Sea, had not long ago arrived in South Carolina; and that its officers and seamen had stated that they had recently divided among themselves two thousand pounds sterling (equal to at least forty thousand dollars in purchasing power) taken from the coffers of a Moorish vessel overhauled in the course of their last cruise. "I fear," wrote Nicholson in deprecation of the sensation which this news had caused in the Colony, "that, if such people be encouraged, it may prejudice his Majesty's service by debauching the inhabitants to make them leave planting and following ye same trade." And in conclusion, he added: "I very much fear these sort of privateers or rather pirates when they have spent lavishly what they have got, then they are ready, if not before, to make disturbance in the Government."<sup>1</sup>

There seems to have been some ground for Nicholson's thinking that many of the colonists would be led away by the privateers' rich captures. This booty, whenever it was brought into Virginia, where it was always seen by many persons, was well calculated to dazzle the eye and over-stimulate the imagination of the beholder. In 1688, for instance, the captain of the guard-ship *Dunbarton* arrested three men who had in their possession an almost incredible amount of treasure, in the form of broken silver plate, foreign money, and silver bullets, the whole, which filled several chests, weighing from four hundred to five hundred pounds. As it was suspected that these articles had been taken from a ship wrongfully captured, they were carried off to England by

<sup>1</sup> Letter of Nicholson, July 16, 1692, B. T. Va., Entry Book, vol. xxxvi., p. 207.

Howard, and there delivered to the Government.<sup>1</sup> The incident excited lively comment in the Colony, and descriptions of the precious metal did not grow less graphic in passing from mouth to mouth. It was supposed by some persons of those times that the cupidity thus aroused induced many people to give a friendly reception to the buccaneers when they undertook to land. "If the pirates have not supplies and a market for the goods that they plunder and rob," wrote Robert Quarry, of Philadelphia, to Governor Nicholson in 1699, "they would never continue in these parts of the world."<sup>2</sup> There is no proof, however, that such marauders found any section of the population of Virginia disposed to enter into practical collusion with them, either by purchasing outright their ill-gotten merchandise, or by furnishing them with victual in exchange for it.

In June, 1699, a ship, having among its passengers sixty pirates belonging to the band of the notorious Captain Kidd, and loaded down with Eastern merchandise of extraordinary value, arrived in Delaware Bay, after an unbroken voyage from the island of Madagascar. It was under Captain Shelley's command, who admitted that he had obtained his cargo by trading with the pirates in those remote waters. Eighteen of the buccaneers brought over remained at Cape May, while nine, having secured a sloop, made their way towards Virginia, possibly with a considerable quantity of goods for sale in that Colony. In the meanwhile, other small vessels were expected from New York, which were to

<sup>1</sup> B. T. Va., 1690, No. 1; 1691, No. 47. The names of the three men were Edward Davis, John Hinson, and Lionel Delawafer. The seizure of this treasure led to a long controversy.

<sup>2</sup> B. T. Va., 1699, vol. vii., p. 79.



convey thither the rest of the merchandise. Information of this ship's presence in the Jerseys, and the departure of a part of its crew for Virginia, was promptly sent to Governor Nicholson, so that he might take steps to arrest them so soon as they arrived.<sup>1</sup> Nor were these the only marauders whom that officer was called upon to look out for during the same year; in 1699 also, a large band of pirates landed on Block Island within the limits of Rhode Island. Having removed to shore all their booty, which happened to be in the form of money and plate, they allowed their ship to sink, and then breaking up into separate bands, they dispersed in several directions. One of these bands was reported to have turned its face towards Virginia; and news of this fact having reached Nicholson, he issued a proclamation ordering their capture so soon as they were discovered to be within the bounds of the Colony.<sup>2</sup>

A short time after this proclamation was published, Thomas Wellburn, the sheriff of Accomac, sent the Governor word that Mr. Matthew Scarborough had lately informed him that he had conversed only a few days before with two persons who had recently visited a ship belonging to Captain Kidd, then lying off the coast; and that they had stated that this vessel carried a very large complement of men, and that it was armed with forty-two cannon. The sloop accompanying her had on board eighteen additional guns. It was also

<sup>1</sup> Robert Quarry to Nicholson, June 2, 1699, B. T. Va., vol. vii., p. 79. Quarry declared in this letter that the people of the Jerseys assisted Captain Shelley, though suspected of being a pirate himself, and certainly known to be in collusion with pirates. "Not a magistrate of this country," he wrote, "will concern himself, but exclaims against me for disturbing the men that bring money into the country."

<sup>2</sup> Minutes of Council, June 8, 1699, B. T. Va., vol. liii.

reported by these two witnesses, probably with considerable exaggeration, that the ship contained treasure amounting in value to five hundred and twenty thousand pounds sterling; that there were not less than thirty tons of precious metal stored below deck; and that when this cargo of fabulous wealth was divided up, each pirate would be entitled to four thousand pounds in gold and silver.<sup>1</sup>

Only a few days before Wellburn's letter was written, Captain Aldred, of the *Essex Prize*, had sighted the pirate ship in Lynnhaven Bay, to which waters she had leisurely gone from the coast of Accomac. He described her as being an English built vessel, equipped with about thirty guns, and with the King's colors and a red flag flying at her maintop masthead. He learned that she was known sometimes as the *Alexander*, and sometimes as the *Providence Galley*; that she was under the command of one John James; and that she was manned by a crew of thirty. Aldred promptly bore down on her when she came in sight, but having been received with a sharp volley, and deeming his own force, owing to the absence of seven of his seamen on shore, insufficient, he stood off; and soon returning to the north side of the river, sent a dispatch to the Governor to inform him of the pirate's presence. Finding themselves unmolested, the buccaneers now began to plunder every boat, sloop, and ship that passed within their reach. First, they seized a flyboat, and having stripped her

<sup>1</sup> Letter of Wellburn dated "Chincateague, June 29, 1699," B. T. Va., vol. lii., p. 40. The ship and sloop together were manned by a crew of one hundred and thirty. Wellburn's words were: "Mr. Matthew Scarborough informs me that one Stretcher and Peter Lewis of ye Whon'kill was aboard of Kidd, and they reported, etc." These two men had merely visited the pirate ship, though described as having "formerly been of the same function."

of her main and top sails and her best bower anchor, they next rifled her of one hundred pounds of merchandise of various sorts. Not content with this, they forced eight members of her crew to join them. A second sloop was robbed of its entire cargo of wheat. The same night, the pirate ship moved out of the Capes with the intention, as was shown afterwards, of stopping any vessel which might be observed to be making its way in. On the following morning, the *Roanoke*, a merchantman, was peremptorily ordered to lower her flag, as she was about to enter the Bay. Her captain noticed that many of the buccaneers (who had soon mounted to his deck) had gold chains suspended about their necks; and that their leader had attached a gold toothpick to the one he wore. This leader, having hastily read the *Roanoke's* clearance papers, directed his men to seize that vessel's sloop, and having loaded her with the pork, peas, and other foodstuffs forming a part of the *Roanoke's* cargo, to carry them on board his own ship; at the same time, he assured the captain of the *Roanoke* that he had no reason to be alarmed for his own personal safety. The pirates were soon engaged in removing the articles, which consisted of sixteen barrels of pork, one barrel of tallow, twenty-nine bushels of beans, several casks of water, and a large number of firelocks and carpenter's tools, together with a great quantity of rope and ammunition. While this was in progress, the commander of the merchantman was compelled to leave his ship and to go on board of the pirate vessel, whose captain, after conversing in the cabin with him for some time, ordered him to fetch a large quantity of fresh water kept in the flyboat, but the tide preventing him from returning promptly, the buccaneer leader, becoming impatient,



set out in person to bring both him and the water back; and the commander of the *Roanoke* was detained on board, until, night coming on, the ship weighed anchor and moved out to sea.<sup>1</sup>

The captain of these pirates did not confine his seizures to the provisions he needed, but forced two officers of the *Roanoke*, one of whom was the mate, to abandon their ship and accompany him. There was already included among the members of his crew a sailor whom the merchantman's commander had recognized as formerly belonging to a brigantine recently captured by the buccaneers; and it was by no means improbable that a large number of his companions had been originally impressed like himself. This was an ordinary occurrence in these early times. As a rule, the men so taken were in the beginning carried off against their will, but they soon became reconciled to their new situation when they found themselves rewarded at a rate far higher than any they had ever before known. Among the buccaneers tried at Elizabeth City near the end of the century, was one who stated that, when he was brought a prisoner on board of the pirate ship, the captain consoled him by saying: "You have been serving in a merchantman for twenty-five shillings a month. Here you may have seven or eight pounds a month if you can take it."<sup>2</sup> The utter helplessness of the captive's position compelled him to resign himself to his fate, and many who, left to their own guidance, would have shrunk back in horror from the thought of complicity in murder and robbery, no doubt, in time, under the seductive influence of a share

<sup>1</sup> Letters of Captain Aldred, B. T. Va., vol. lii., p. 40. The description of the pirate appears in a letter from Aldred dated July 26, 1699.

<sup>2</sup> B. T. Va., vol. lii., p. 55.

in the booty, took rank among the boldest and most energetic of these outlaws.

After the *Roanoke* was released, she directed her course towards Annapolis in the Province of Maryland, but news of her adventure was soon brought to the Governor and Council at Jamestown. As these officers were confident that the pirate ship was still hovering off the coast, and might at any time reappear within the Capes, they issued a proclamation providing for a strict lookout at every point where she was likely to be seen. The commanders-in-chief of the militia of Elizabeth City, Norfolk, Princess Anne, Accomac and Northampton counties were ordered to appoint in their respective districts persons who, without interruption, should patrol the shores until the twenty-ninth day of the following October, an interval of about three and a half months. One man was to be chosen whose duty it should be to pass constantly backwards and forwards along the beach between Cape Henry and Currituck Inlet; another to walk the length of the seaboard in Accomac; another the length of the seaboard in Northampton; and a fourth to be stationed on Smith's Island situated not far from Cape Charles. Should any one of these watchers discover a boat making its way to the shore which there was good reason to suspect was occupied by pirates, then he was to hasten to inform the nearest militia officer in order that the whole country might be at once aroused; this was done by this officer in his turn reporting the same fact to all the neighboring commanders-in-chief; and they, in their turn, were required to report it to the Governor and Council at Jamestown; and if possible the same news was to be communicated to the captain of the guard-ship.<sup>1</sup>

<sup>1</sup> B. T. Va., vol. lii., p. 39.

This was not the first time that such regulations as these had been adopted for the coast's protection; among the sums the Council had, in 1688, ordered to be disbursed was one of four pounds and ten shillings in favor of Gilbert Moore, who during three months had been engaged in patrolling the shore on the seaboard side of Accomac and Northampton.<sup>1</sup> In 1690, the same body, having carefully weighed the great damage possible to be inflicted by an enemy who should arrive suddenly and unexpectedly, instructed Colonel John Lear to select some person to keep watch on the seaboard side of Lower Norfolk county, whilst Colonel Custis was authorized to make a similar appointment for the seaboard side of the Eastern Shore.<sup>2</sup> Two years later, this command was repeated for each district.<sup>3</sup> Thomas Moore was now chosen to range and scout at least once a week on the side of Smith's Island facing the open ocean; and also on the side facing the Capes; and daily also to make observations from the bay side of the mainland. As soon as he should detect the sails of a suspicious ship, he was to leave his post and inform the nearest militia officer of the vessel's approach.<sup>4</sup>

Down to 1699, the vigilance of the lookout on Smith's Island had not been relaxed, for in October of that year Colonel John Custis reported to Nicholson that, a few days before, a pirate ship had dropped anchor behind

<sup>1</sup> Minutes of Assembly, April, 1691. Colonial Entry Book, 1682-95.

<sup>2</sup> B. T. Va., 1690, No. 11; see also Orders Jan'y 15, 1690, Colonial Entry Book, 1680-1695.

<sup>3</sup> Orders of the Council, April 19, 1692, Colonial Entry Book, 1680-95.

<sup>4</sup> Northampton County Records, vol. 1689-98, p. 168. In 1692, the appointment of a watcher for the Eastern Shore was left to the justices of the county courts of that part of the Colony.



the island, and that, in a short time, a band of twelve well armed men, having landed, had proceeded to shoot down all the cattle and hogs coming within the range of their guns. The carcasses were skinned and the meat cut up and carried off to the vessel, which, as soon as night had fallen, stole away in the darkness. Smith's Island, from its lonely position off the coast, offered the buccaneers a comparatively safe place for obtaining supplies of fresh victuals, fuel, and water. No watcher on the mainland could approach its shore if the waves were running high; and it would require one hundred men with good muskets to capture a party of pirates who should land. Custis eagerly urged that a frigate should be stationed at the mouth of the only stream to be found on the island, as the one place where the pirates would be compelled to drop anchor in case they wished to go ashore. The villains, he asserted, were afraid to disembark on the mainland to secure what they needed in the way of water, wood, and provisions, as a military force could be soon raised there to beat them off.

Under the influence of this letter and the like received about this time, the Council declared that the dangers to be expected from the pirates constantly "grew greater and greater"; and they earnestly recommended that the Governor should beg the King to take the promptest steps to exterminate these terrible outlaws. The Committee of Plantations had recently sent Nicholson a list of the names of the most notorious offenders infesting the American coasts; and this list he now published in a proclamation in which he offered twenty pounds sterling for the capture of each of the buccaneers whose names were given.<sup>1</sup>

<sup>1</sup> B. T. Va., vol. lii., p. 43; for Custis's report, see *ibid.*, p. 42.

## CHAPTER XVII

### Foreign Invasion: Pirates-(*Continued*)

EARLY in the year 1699-1700, Nicholson received an order from the English Government to send to England all the pirates at that time languishing in Virginia prisons; and they were to be accompanied by the witnesses relied on for their conviction. All such offenders who might be seized in the future were directed to be tried in the Colony, provided that the circumstances attending their capture were not such as to arouse the people's compassion to such a degree as to assure their acquittal. Should the Governor, in a special case, have reason to think that a jury would decline to bring in an adverse verdict, then the pirate was to be transported to England, with a view to having the charge against him investigated there.<sup>1</sup>

It was not many months before the Governor had occasion to exercise the discretion allowed him by the terms of this order. Never had the buccaneers shown more activity or caused more alarm among the merchantmen trading with Virginia than during the last year of the century. But there was now a guardship fully capable, both in the number of its guns, and the courageous spirit of its officers and crew, of coping with any single pirate vessel; this was the *Shoreham*,

<sup>1</sup> Letter to Nicholson, February 10, 1699-1700, B. T. Va., Entry Book, vol. xxxvii.

still under the command of Captain Passenger, who always found in Nicholson a supporter ready at any moment to risk his life in actual conflict with the outlaws. That Governor, however, was not content to rely upon this ship alone for the Colony's protection from their ravages. Having in April 1700, been informed that there were several pirate vessels lying in Lynnhaven Bay, he at once dispatched an order to Col. Thomas Ballard and Major William Buckner, of York, to notify every merchantman riding in York River of the freebooters' presence; and also to call together, at the earliest moment, the county's military forces to resist a possible landing. A message of the like import was to be sent by these officers to the commanders of the militia in Gloucester and Middlesex, so that the vessels riding in Mobjack Bay and in Rappahannock River, and also the people of the two counties themselves, might be placed on their guard. The officers of Gloucester and Middlesex were, in their turn, to send a like express to the officers of Lancaster, and the officers of Lancaster to the officers of Northumberland, and the officers of Northumberland to those of Westmoreland; so that all the merchantmen anchored in the waters of these counties, and all the inhabitants as well, might be informed of a possible descent. Finally, the message was to be carried across the Potomac and delivered to Governor Blackstone, of Maryland, to enable him to ensure the safety of the Province and of all the vessels trading with it. Before the end of three days, the whole area of country from York county as far north as Annapolis had received full warning of the presence of the pirate vessels anchored at the mouth of the Chesapeake Bay, a proof of the promptitude shown by the authorities of Virginia when-



ever a military emergency arose requiring a general alarm to be raised. Nor did Nicholson wait until the sea-captains and people in the counties situated nearest to Lynnhaven Bay on the south side of the James, should, by passing report, hear of the danger to which they were exposed, but instead directed Colonels Miles Cary and Lemuel Mason to warn all the merchantmen lying in the Elizabeth and Nansemond Rivers to be prepared for attack; and the same officers were also commanded to hold the militia of the neighboring country in readiness to run together at an hour's notice.<sup>1</sup>

When this general order was sent off, Nicholson was stopping at Kikotan, where the *Shoreham*, which had come in to replenish its water casks, was lying. On Sunday, April 28th, a merchantman arrived with the not unexpected news that pirates had dropped anchor in Lynnhaven Bay. It turned out that there was but one vessel, which was named by the buccaneers, probably in a spirit of derision, *La Paix*. This ship was of two hundred tons burthen, with a length of eighty-four feet by the keel and twenty-five by the beam; and with a depth of eleven feet in the hold. The decks consisted of a flight deck fore and aft, a half deck near one of the masts, and a forecastle. She was armed with twenty iron guns placed on her main deck, and with eight placed in her hold; and she carried thirty-two barrels of powder in her magazine. Her crew, with the exception of the pilot, an Englishman, was made up entirely of foreigners.

The *La Paix*, which had formerly belonged to citizens of Holland, had been engaged in transporting salt to Surinam, and in the course of one of these voyages, had been captured by pirates, who had turned her captain

<sup>1</sup> Letter of Nicholson, B. T. Va., 1700, vol. viii., Doct. 16.

adrift on the high seas in a long boat. Taking possession of her as superior to their own vessel, they sailed towards Carthagen. On their way to that place, they seized a Dutch brigantine, but released her after rifling her of her supply of provisions. Meeting a third Dutch ship, armed with twelve guns, and manned by a crew of thirty-two sailors, they promptly engaged in a battle with her, and having succeeded in boarding her and forcing her to strike her colors, they carried off all her largest cannon as well as seven of her finest seamen. They now turned the prow of their vessel towards Hayti in the West Indies. As they approached that island, they came upon a sloop, which they stopped, but released as soon as they had taken from her two artisans belonging to her crew. A short time afterwards, they captured a Dutch vessel loaded with a cargo of linen, a part of which they appropriated, and then permitted her also to escape. In a few days, the *La Paix* was joined by a second pirate ship armed with sixteen guns, and manned by a crew of eighty. A portion of this crew was soon transferred to the *La Paix*, and, thus strengthened, she was able to capture a large merchantman, whose surgeon was forced by the pirates, in violent opposition to his own wishes, to remain with them when they allowed the merchantman to set sail again. By the time the *La Paix* had arrived off the coast of Hayti, her crew had increased in number to one hundred and twenty-five outlaws. Without lingering in those waters, they made their way toward the Florida Keys, where they soon succeeded in capturing a sloop belonging to Boston; but as she carried no cargo, and had on board only a small amount of money, they permitted her to continue on her voyage. In a few days, they sighted the pink *Baltimore* bound for Barbadoes;

stopping her, they transferred to her decks twenty of their own men, who received orders to follow in the wake of the *La Paix* towards the Capes of Virginia. Meeting a brigantine, they set out in pursuit of her, but finding it difficult to overtake her, the *La Paix* turned back, but the *Baltimore* pressed on until both vessels sank below the horizon. Before reaching the Capes, the *La Paix* overhauled the *Pennsylvania*, a merchantman, and fearing lest her officers, if allowed to continue their voyage to Virginia, would inform the guard-ship of the pirates' approach, they deliberately set her on fire, and burned her to the water's edge. On the day before entering the Chesapeake, they succeeded in capturing two large vessels.<sup>1</sup>

Such was the history of the vessel which Captain Passenger was informed was riding in Lynnhaven Bay. Immediately on receiving this news, he sent a messenger after his men who had gone ashore, and at the same time signalled to the merchantmen bound out of the Capes that he needed seven more to complete the full complement of his crew. Having in this manner secured the number he required, he spread sail, but night falling before Lynnhaven Bay was reached, his pilot refused to go any further until the next day, either because the navigation was dangerous in the darkness, or because the pirates might be able to attack the ship at a disadvantage. Anchor was dropped when the *Shoreham* arrived within three leagues of the buccaneers. While she was lying here, Governor Nicholson, Peter Heyman, the collector of the Lower James River district, and Captain Aldred, of the *Essex Prize*, came aboard in

<sup>1</sup> For these details relating to the history of the *La Paix*, see testimony of its captain in the trial that took place at Elizabeth City; B.T.Va., 1700, vol. lii.; also B. T. Va., vol. viii., Docts. 13, 15.



expectation of taking part in the approaching combat. At three o'clock in the morning (April 29th), Captain Passenger, who had probably grown too impatient to wait any longer, weighed anchor, and an hour later, when dawn had hardly begun to show itself, he came up with the outlaws. As soon as the *Shoreham* had approached as near as a half mile, the commander of the pirate ship let loose his topsails with the intention of running to the windward of the opposing vessel so as to be able to board her the more successfully, but Captain Passenger, observing his purpose, persistently kept to the windward himself, and at the first favorable opportunity fired a shot at his adversary. Immediately, the pirate ship ran up to her masthead a jack ensign with a red pennant. It was now five o'clock in the morning, day had broken, and the battle began in earnest; and it continued until three in the afternoon. Throughout this interval of ten hours, the two vessels remained within a pistol shot of each other. Again and again, the captain of the pirates sought to get to the windward of the *Shoreham*, but in vain; during all this time, his vessel was receiving broadside after broadside, until finally her masts, yards, sails, and rigging were shot away, several of her guns were unmounted, and her hull rent and splintered. Not being able to stand up against the storm of shot, the crew took refuge in the hold and the ship being left without any guidance, drifted toward the shore, and at last ran aground. In this predicament, the pirates lowered their ensign, and the *Shoreham* ceased firing. In a short time, they sent several of their English prisoners on board to inform Captain Passenger that, unless he should give some assurance of quarter, they would blow up their ship, and that a train of thirty

barrels of powder had already been laid for the purpose. Thinking that the buccaneers were desperate enough to destroy both themselves and their prisoners in this manner, Nicholson wrote a letter to their captain informing him that, should they surrender quietly, he would refer their case to the royal mercy, with a recommendation of lenient treatment.<sup>1</sup> The only person on board of the *Shoreham* who perished in the fight was Peter Heyman, who, as we have seen, was serving as a volunteer.<sup>2</sup>

The band of pirates captured when the *La Paix* surrendered numbered one hundred and ten men, who were at once taken to Kikotan, and there put under guard. The victual needed for their support during their stay there, which seems to have been supplied by Col. William Byrd and Edmund Jennings, consisted of ten barrels of pork, twelve barrels of beef, and sixty bushels of peas. As the clothing of many of the prisoners was soon worn to rags, the sails of the ship were given to them to furnish material with which to make the garments required. Eight died during their short confinement at Kikotan. Ninety-nine of the survivors were finally placed on board of the fleet of

<sup>1</sup> Report of Captain Passenger, B. T. Va., vol. viii., p. 393. During the progress of the battle, one of the pirates came down into the hold of his ship, where there were forty or fifty prisoners, and when some one among them asked him how the fight was going, he replied: "Damn her, she is but a little toad, no bigger than we are. We shall have her presently."

<sup>2</sup> Minutes of Council, May 6, 1700, B. T. Va., vol. liii. Nicholson was warmly congratulated on the active part which he had taken in the fight; see letter of Governor Blackstone of Maryland, May 15, 1700, B. T. Va., vol. viii. In June, Nicholson was again found on board of the *Shoreham*, which at this time was cruising outside of the Capes in hourly expectation of sighting pirate vessels; see letter of Nicholson in B. T. Va., 1700, vol. viii. This letter was dated June 10, 1700.

merchantmen, which soon set out, under the convoy of the *Essex Prize*, and they were thus carried to England for trial. During the voyage, their hands were shackled and they were kept in awe by a constant display of small arms. In one vessel alone, so large a company as thirty were transported; but this was done in the guard-ship only, because manned by too strong a force for even this number of outlaws to indulge the hope of a successful attack, especially when they were in irons and under the vigilant eye of suspicious sentinels. A general order was given to the captains of the merchantmen that, should they arrive in England along with the *Essex Prize*, they were to deliver their prisoners to the commander of that vessel. Should storms however separate them from their convoy, they were, on reaching the Mother Country, to turn the pirates in their keeping over to the mayor of the town where their voyage ended; and if that town happened to be London, then to such officers as the Lords of the Admiralty should designate.<sup>1</sup>

Three of the pirates, whose conduct was considered to have been peculiarly heinous, were detained at Elizabeth City for trial by the admiralty court which was soon summoned to convene there to investigate the charges brought against them. They were all condemned to be hanged. Before the day chosen for their execution arrived, they escaped, but were captured when they had only succeeded in getting as far away as the Eastern Shore. They were sent back to the prison of Princess Anne county, where they had previously been confined, and here in the end they paid the penalty of their long career of murder and robbery.<sup>2</sup> The

<sup>1</sup> Minutes of Council, May 23, 1700, vol. liii.; June 8, 1700, vol. viii.

<sup>2</sup> In his address to the jury in the trial of the three pirates,



names of the three men were John Houghing, Cornelius Franc, and François DeLaunay. Houghing was born in New York of Dutch parentage, was thirty years of age, and spoke the English and Dutch tongues with equal facility. He was described as possessing a stout figure, a thick neck, round face, ruddy complexion, and short curly hair. Franc, like Houghing, was of Dutch descent. He was even more accomplished as a linguist; when captured, he exclaimed with great bitterness: "Must I be hanged that can speak all languages?" and so valuable on this account was he considered to be by the captain of the pirates that the latter declared he would "not have parted with him for one hundred pounds sterling." Franc had reached middle age. DeLaunay, as his name plainly showed,

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Edmund Jennings, who prosecuted them, said: "Pyracy is the worst of crimes and Pyrates the worst of men. Nay, by these base actions, they degrade themselves below the rank of men and become beasts of prey, and are worse than the worst of enemys, for they are governed by no laws of nations or of armes; they never give quarter or show mercy but as they please themselves, live by rapine and violence, declare no warr and yet are enemys of all mankind; they violate all the lawes of God and Man without any remorse or Regrett; they love mischief for mischief's sake, and will do what mischief they can, though it bring no advantage to themselves"; B. T. Va., 1700, vol. lii.

<sup>1</sup> B. T. Va., vol. lii., pp. 56, 60; B. T. Va., 1700, vol. viii., Doct. 16. The following is a description of the pirates who in 1699 captured the *Adventure* of London, and who were suspected of lurking about the coasts of Virginia: "John Lloyd, raw boned, very pale complexion, dark hair, remarkably deformed by an attraction of the lower eyelid, about 30 years of age; Thomas Hughes, tall, lusty, rawboned, long visage, swarthy, above 28 years of age; Thomas Simpson, short and small, much squint-eyed; James Vanner, short, very well set, fresh colored, pock marked, about twenty years of age; Lee Wetherby, short, very small, black, blind of one eye, about eighteen years of age; Thomas Jameson, cooper, tall, meagre, sickly complexion, large black eyes, about thirty years of age; William Griffith, short, well set, broad faced, darkish hair,

was a Frenchman in blood, but was far more ignorant than his two unfortunate fellows, for beside his native tongue, he had only a small smattering of English words. He also had passed his first youth.<sup>1</sup>

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about thirty years of age; Thomas Davis, short, small, sharp chinned, reddish hair, about two and twenty years of age; Francis Reade, short and small reddish hair, about eighteen years of age; William Saunders, ordinary stature, well sett, pock marked, black hair, about fifteen years of age"; B. T. Va., vol. viii., Doct. 16. These details appear in a proclamation by Nicholson.

**Part V**  
**Political Condition**





## CHAPTER I

### Government under the Charters

THE political history of Virginia during the Seventeenth century may be divided into at least nine periods, some longer, some shorter than the others, but each different in character from the rest. First, there is the period extending from the Colony's foundation in 1607 to the grant of the charter in 1609, the interval when a purely autocratic government, represented by the King in England and the President and Council in Virginia, prevailed<sup>1</sup>; secondly, the period beginning with the grant of the charter of 1609 and ending in 1619, the interval when martial law was enforced; thirdly, the period lasting from 1619 to 1624, when the Colony's affairs were administered in England by the wisest and most patriotic statesmen of that day, and in Virginia, by a General Assembly, elected in its most important branch by the people, and animated by a desire to carry out the principles embodied in the Instructions of 1618, and the Constitution of 1621; fourthly, the period extending from 1624, the date of the revocation of the letters-patent, to 1651, during which time the Colony remained subject, not to a company as formerly, but to the Crown itself, whilst the people continued to have a voice in the choice of their

<sup>1</sup> See Rolfe's description in Brown's *Genesis of the United States*, vol. i., p. 206.

rulers by the election of Burgesses; fifthly, the period lasting from 1651 to 1660, the interval of the Protectorate, when all the political power being virtually centred in the Lower House of the General Assembly, a higher degree of popular freedom prevailed than had, for many years, been observed in Virginia; sixthly, the period extending from about 1661 to 1676, during the greater part of which time, the Long Assembly remaining undissolved, the reactionary influences at work in England were reflected in every department of the colonial government, to the serious detriment of the inhabitants' rights and liberties; seventhly, the period of 1676, when Berkeley's power had been overthrown, and the affairs of Virginia were under the temporary control of Bacon and those who sympathized with his purposes; eighthly, the period lasting from 1677 to 1688, an interval during which the ills growing out of the licentious exercise of the royal prerogative in England by Charles II and James II were, in a modified form, repeated in the Colony by Culpeper and Howard as representatives of the royal authority; and finally, the period beginning in 1688, the year of the Revolution in England, and continuing during the remainder of the century, an interval when the enlightened and rational spirit characteristic of the period between 1619 and 1624 again animated the local government.

The first charter, granted in 1606 for the establishment of a colony in Virginia and the administration of its affairs, laid down two principles which have had an important influence in shaping the history of the colonial empire of Great Britain, and indirectly the history of Great Britain itself: first, the Colony was to be under the immediate control of the Crown, and not of the Crown and Parliament together, as was the



case with England itself; secondly, the King's subjects residing in Virginia, whether they had emigrated thither or been born there, were to enjoy all the "liberties, franchises, and immunities within any of the royal dominions" just as if they had first seen the light in the Mother Country itself.

The letters-patent of 1606 declared that the reigning King, whoever he might be, would from time to time "ordain and give" such additional instructions, laws, and constitutions as should seem necessary to ensure a more fruitful and beneficent rule. This clause in so many words bestowed, not only on the monarch then living, but also on his heirs and successors, the exclusive right to govern the new colony unless they should see fit to delegate that power to others. When, at a later date, a petition was presented by the London Company to Parliament touching the affairs of Virginia, and a committee was appointed to consider it, the King sent a special message to Parliament expressly forbidding it to intervene, on the ground that it was without jurisdiction in such matters, since that jurisdiction belonged to himself alone. This principle he successfully maintained; and when, in the following century, the same body sought to enforce in America certain revenue Acts passed without the consent or participation of the American people, the latter, remembering that principle, justly claimed that, by the original charters, they were subject to the royal authority alone. The memorable resolutions offered by Patrick Henry in the House of Burgesses in May, 1765, denying the right of Parliament to exercise any form of control over the Colonies, merely expressed the general principle laid down an hundred and fifty-nine years before by James I, and silently assented to by Parliament itself, until the

overthrow of the Monarchy by Cromwell and his followers gave that body for the first time the power to carry out its own wishes in the administration of colonial affairs. When the agitation that culminated in the Revolutionary War began, Parliament, refusing to listen to the Americans' protest, put forward the specious claim that all classes in the Colonies as well as in the Mother Country itself were represented in its membership, and were, therefore, subject to the operation of its Acts. This was a claim which the Americans declined to acknowledge; and they were historically justified in doing so by the general principle embodied in the earliest of all the charters. By the determined spirit which they showed before hostilities began, and by their successful maintenance of their position by force of arms, they caused the English Government, in its subsequent relations with its remaining colonies, to return to that principle as universally accepted previous to the establishment of the Protectorate. All the large English colonies are now great self-governing communities; and apart from the tie of a common ancestry, the one powerful bond uniting them to England is, not a loyal subservience to Parliament, as that body would have had it a century and a half ago, but personal loyalty to the British Sovereign, the limit of colonial dependence as proclaimed by all the Revolutionary patriots on the authority of James I when he granted the charter of 1606 to the London Company. Had the remonstrances of Franklin, Henry, and their fellows been listened to, the King of England to-day would be the political ligament which would be uniting to the Mother Country the entire body of the Anglo-Saxon peoples, instead of those peoples being divided into two great nationalities, a fact which has

diminished their power and lessened their influence among mankind.

When it was provided in the charter of 1606 that every citizen of Virginia should enjoy "the liberties, franchises, and immunities" of one born in England, the first step was taken towards the introduction into the projected colony of all the free institutions so long planted in the Mother Country itself. Had the government of that colony remained, during the whole course of these early years, in the exclusive control of the King himself, instead of being, in 1609, delegated to a company, this clause would sooner or later have assured, among other privileges, that of local representation, which, as we will see, was granted by the Company itself nine years after it had received its second charter. As the wealth of the new country increased and its population expanded, the right of summoning a popular assembly would, in time, have been exercised as coming within the scope of those general rights of all English subjects guaranteed by the first charter to the inhabitants of Virginia. Whether the Colony was ruled directly by the King or a company, such a consummation was inevitable. In those momentous words of the first charter, there lay the real authority for calling together the earliest legislative assembly to convene on the American Continent among the English-speaking peoples; they were broad enough to receive so liberal an interpretation; and advantage was taken of this fact so soon as the condition of Virginia justified it. Profoundly grateful as we should be to the enlightened men who were directing the London Company in 1619,—the year the first Assembly came together,—nevertheless it should be remembered that, whether intended or not, it was owing to James's proclamation in the first



charter of the memorable principle of the common rights of all English subjects, whether born under English skies, or on the remote plantations in the West, that the meeting of this first Assembly,—the second great event in the history of English Colonization,—was made possible. It is, however, not probable that this timid monarch foresaw the broad interpretation which, in time, would be placed on those simple words, and the extraordinary results, promotive of liberty and freedom in two hemispheres, which would spring from them. His claim to absolute control over the Colony's affairs, which he successfully maintained, was certainly not based entirely on an ambition to rule it in the spirit of a beneficent sovereign, whose single object was to advance the moral welfare and material prosperity of its people. Whatever lofty motives may have influenced him in insisting upon his exclusive right,—if a motive of that kind influenced him at all,—was deeply colored by a sordid desire to increase the royal revenues, all the more highly valued because, to that extent, he would be rendered independent of a hated and discontented Parliament. If he could enforce his claim to the absolute control of the dominion beyond sea, then all the duties collected on the products of Virginia imported into England would pass into the royal treasury; and James was too shrewd not to perceive in the very beginning how enormous the income from this source might, even in the course of his own reign, become. Though he himself might not reap the full advantage of this income, his heirs would undoubtedly do so, and thus be able to regard with comparative indifference a House of Commons equally niggard and defiant.<sup>1</sup>

<sup>1</sup> Down to the reign of Queen Mary, the imposition by the King

It was only in a general way that popular rights were, by the charter of 1606, guaranteed to the citizens of Virginia; none was specifically mentioned; but definite commercial privileges were granted by that charter, as well as the authority to carry out certain practical and political arrangements. For instance, the colonists were, during a stated period, to be exempt from the usual customs; and when that period had come to an end, the duty on goods imported into England by them was not to exceed five per cent. of the value of the merchandise; they were to be allowed to transport adventurers to the new plantations; to take all necessary steps for the protection of the settlements against invasion; to make search for mines of precious metals; and to coin money.

Under the charter of 1606, the Crown's chief agency in governing the Colony was to consist of a council of thirteen persons resident in England, who were to be nominated and appointed by the King himself, and to be guided in all their proceedings by such laws, ordinances, and instructions as he should give. The membership of the body could, at any time, be changed by the royal will, and increased or diminished should that will

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of a new duty on imports or exports without the consent of Parliament was illegal. Both Mary and Elizabeth, however, undertook to dispense with this consent. The question of the Crown's right to do this came up in court in 1606 and was decided in the Crown's favor. The question was reconsidered in Parliament in 1610, a compromise then proposed came to nothing, and the question was left open to produce discord in the course of the next generation. In the light of this uncertain status, it was only to be expected that James would be quick to claim that all the customs from the Virginian imports belonged to him alone regardless of any opposition on the part of Parliament. The general rule was that the sovereign at the beginning of his reign received for life from Parliament a grant of the existing port duties.

decide it to be advisable. This council was authorized to name a second council, to reside in Virginia, with a direct control over the administration of its affairs, but, like the parent council, subject to the laws, ordinances, and instructions laid down by the King, of which they were to be informed as ordained. Each member of the Council of Thirteen in England was required to take an oath that, whenever a question of importance or perplexity should arise, he would join with his associates in referring it to the consideration of the Privy Council, whose decision was to be accepted as conclusive.<sup>1</sup> About twelve months after the grant of the first charter, the membership of the Council residing in England was increased in number in order to avoid the delays caused by the remoteness of many of the Councilors' homes, which prevented them from attending the body's sessions with regularity. Having been thus enlarged, an assembly composed of any twelve of its members was authorized to nominate officers; to adopt ordinances and laws; and to execute all the other powers conferred on the original council.<sup>2</sup>

Three years after the first letters-patent were issued, two of the practical commercial purposes for which the Company had been established had resulted in disappointment, namely, the expected discovery of gold and silver in the soil of Virginia, and the finding of a passage through its territory to the seas washing the eastern shores of Asia. All the other commercial objects in view in the beginning remained as full of promise as before; but it had now been shown by

<sup>1</sup> Brown's *First Republic*, p. 9; *Va. Maga. of Hist. and Biog.*, vol. vii., p. 39.

<sup>2</sup> Ordinance Enlarging Council, Brown's *Genesis of the United States*, vol. i., p. 91.



hard experience that the expense entailed by so great an action was far heavier than a few incorporators could meet without leading to their total ruin. If all the ends considered in forming the original company were to be carried out successfully, then a larger sum had to be furnished; and this could only be obtained by the creation of what would be substantially a new company composed of as many and as wealthy members as could be induced to subscribe to the stock.

How far did political reasons facilitate the rapid formation of the new band of incorporators, to whom, in 1609, the second charter was granted? Apart from the commercial expectations bound up in the enterprise, it is doubtful whether political hopes would have influenced many persons to venture their money upon the issue of its success. It is true that, among the new incorporators, were a number of men who, at a later date, openly sought to use the Company to advance the great cause of civil liberty involved in the prolonged struggle with James. It is not improbable that such a thoughtful and far-sighted man as Sandys,<sup>1</sup> for instance, was drawn into the enterprise in a measure by the anticipation that, in time, the Colony would furnish a freer atmosphere for Englishmen than England itself promised to afford under such a dynasty as the Stuarts; but he, and those who looked forward to the like, must also have recalled the fact that the more prosperous and populous that Colony became, the larger would be the volume of coin which would pour into the royal coffers from the collection of imports on the colonial products, and the less dependent would the monarch be on the grants of income by Parliament, a fact which,

<sup>1</sup> The petition for the second charter was drawn by Sir Edwin Sandys.

on account of the arbitrary and pertinacious traits of the Stuart temper, was certain to lead to many consequences dangerous to English liberties. It was known to the new incorporators that Virginia could supply at least an hundred commodities England was then forced to purchase from foreign nations at a very high price and with a constant prospect of interruption by war; above all, there was, even at this early period, ground for thinking that the new Colony would furnish the Mother Country with the tobacco then imported from the Spanish possessions in America at such a great profit to the Spanish planters there. It was this substantial reason on which to base the expectation of personal gain that led these incorporators to subscribe so liberally; and the political motive for doing so, if it existed at all, as may very properly be doubted, burned rather faintly in their breasts in comparison with the commercial.

It was fully understood that James, in granting the charter of 1606, had no intention of assuming any part of the expense that would arise in carrying out the projected enterprise; nor was any change in his attitude in this respect brought about by the practical demonstration of the fact that, unless a large sum was obtained, the whole scheme of colonization would end in hopeless disappointment. His unwillingness to contribute to the pecuniary support of the action at the hour when its continuation turned upon the raising of a new fund, led him, in granting the second charter, to offer such liberal terms that subscribers to the new stock of the Company would spring up on every side. The conversion of the Colony from a direct dependance of the Crown into a direct dependance of a joint-stock association could not have been very agreeable to him, but such a step was more desirable than either sustain-

ing that Colony by his own fortune, or allowing it to sink into total and final ruin. Though he had delegated his authority, nevertheless he still retained the assured prospect of a large increase in his income from the customs which, in time, would be paid on the products of Virginia imported into England. The greater the inducements which he could offer in the way of a liberal charter to promote a generous subscription to the re-organized scheme, the more certain was the Colony to grow in wealth and population, and the more valuable to the royal treasury would it become.

But James's niggardness was not the only influence leading him to transfer the immediate sovereignty of the Colony to the London Company. Perhaps, the one characteristic which shaped his political actions more than any other was timidity. By 1609, no doubt was felt that Spain looked upon the settlement at Jamestown with great hostility; in many ways, she had shown her strong opposition to it; and there was reason to think that this opposition might, at any time, assume an overt aggressive form which would bring down upon the Englishmen in Virginia the same fate as had overtaken the French Huguenots in Florida through the same instrumentality. Now, it was the fixed policy of this shrinking monarch to avoid if possible all occasion of giving offence to the Spanish Power; by transferring the government of Virginia to the London Company under the provisions of a liberal charter, which made that company the virtual sovereign of the country, though still subject to his supremacy, he placed himself in a position to disclaim or accept responsibility for its acts just as his interests or his fears might dictate. If the Company's rule was successful and prosperous, it might be proclaimed that the acts



of that body were the acts of the King's loyal subjects; but, on the other hand, if its rule was marked by no good fortune and closed in disaster, it could be said, without danger of contradiction, that the enterprise had been that of a number of private gentlemen proceeding on their own personal liability; and in their failure, or their destruction by a hostile nation, the English state had suffered no loss, and been subjected to neither disappointment nor humiliation.

An examination of the charter of 1609 will show that the rights and powers granted by that instrument were much broader in their scope than those granted by the charter of 1606. In a general way, the Treasurer and Company of Adventurers, and such officers as they might appoint were authorized "to correct, punish, pardon, govern, and rule" all the people who should remove to Virginia with the view of settling there permanently; or who should be born on its soil and remain there; and the tranquillity of the community was to be upheld and all its affairs administered in conformity with such "orders, ordinances, constitutions, directions, and instructions," as should, from time to time, be adopted by the Company's Council in England. In those cases not touched by any law as yet passed, the Governor and his Council in Virginia were to act according to the dictates of their own discretion and judgment. There was one general regulation which all the statutes, rules, and proceedings of the Company and its agents must accord with as nearly as convenience should permit, namely, they must not be in conflict with the "laws, government, and policy" of the Mother Country. Under this charter, as will be seen, the King delegated the right (which had formed the most conspicuous feature of the first charter) of

himself to draw up all the orders, instructions, and constitutions for the administration of the Colony's affairs. His whole power in this respect was transferred to the Company.<sup>1</sup>

The London Company, as reorganized in 1609, was composed of six hundred and fifty-nine persons; and of this number, twenty-one were peers of the realm; ninety-six, knights; eleven, professional men; fifty-three, captains; twenty-eight, esquires; fifty-eight, gentlemen; and one hundred and ten, merchants; and the remaining two hundred and eighty-two, citizens entitled to no special classification. About fifty of their whole number held seats in Parliament, and at least fifty more had, at some previous time, enjoyed that honorable distinction.<sup>2</sup> It is doubtful whether in that age, the kingdom could have furnished a body more representative of all that was best and highest in its various walks of life than the men enrolled as incorporators under this charter. The Council residing in England was composed of fifty-two members, fourteen of whom belonged to the House of Lords and thirty to the House of Commons. It was provided that the Company's business could be legally transacted at any meeting of the stockholders attended by five Councillors and fifteen of the generality; and these meetings were to take place at least four times in the course of the year at regular intervals corresponding to the seasons of spring, summer, autumn, and winter; for which reason they were designated as "quarter courts." It was in these quarter courts that all laws for the Colony's government were passed, and all officers for the active administration of its affairs chosen.

<sup>1</sup> Charter of 1609, Brown's *Genesis of the United States*, vol. i., p. 235.

<sup>2</sup> *Ibid.*, p. 228.

## CHAPTER II

### Government under the Charters (*Continued*)

THE London Company as reorganized was designed to be a perpetual corporation, and as such received a grant of a vast territory, which it was empowered to settle with people drawn from England, or from lands at peace and in comity with that kingdom. Some years passed before the objects the Company sought to promote became more or less involved in the political hopes for the Mother Country entertained by a section of its members. The head of the organization was Sir Thomas Smythe, one of the most opulent and influential merchants of London, a man sagacious enough to perceive that the condition of the Company's continued existence was success from a purely commercial point of view. Until the close of Argoll's administration in 1617, there is no substantial reason to think that the Colony was looked upon by any English party, or any section of the English people, as the home of a broader freedom than any English subject had previously enjoyed; on the contrary, from Sir Thomas Dale's arrival to the flight of Argoll, Virginia was governed by a martial code, which, however necessary at the time, was radically antagonistic to the spirit of English law and English civil liberty. John Bargrave justly accused Sir Thomas Smythe of exercising absolute power in administering the affairs of both



the Company and the Colony; of depriving the settler of all reasonable assurance as to the safety of his estate or the preservation of his freedom; and of laying the heavy hand of oppression on the single planter and large associations of adventurers alike.<sup>1</sup>

When the period agreed upon for the continuation of the joint stock came to an end, the people of the Colony, by the charter's provisions, received separate allotments of land, the titles to which were invested in them alone. It was necessary that a termination should now be put to the operation of martial law, and that a new system of legal and political administration, following the precedent of that prevailing in England, should be set under way. Now for the first time, the political principles in which so many members of the Company were interested began to shape the proceedings of that body in its quarter courts, and to color the views entertained as to the ulterior political advantages to accrue to all Englishmen from the growth of the Colony in Virginia. During many years, a struggle had been going on in England between the King, firmly believing in his Divine Right, and a powerful section of the members of Parliament as to the extent of his prerogative; and it was only natural that men like Sir Edwin Sandys, bent at once on opposing the dangerous pretensions of the bigoted monarch, and on advancing the prosperity of the plantation, should have eagerly striven to protect Virginia from the consequences of royal tyranny, and thus to make it all the more a land where Englishmen might find the civil liberty not enjoyed at home. There is no reason to question the truth of Bargrave's statement that Sandys had declared "that his purpose was to erect a free popular state, in

<sup>1</sup> British Colonial Papers, 1622-23, No. 7.

which the inhabitants should have no government put upon them but by their own consent.”<sup>1</sup> He had assisted Bacon in drafting the memorable remonstrance of James’s first House of Commons against this monarch’s conduct towards that body. In 1614, the King dissolved his third Parliament, and during a period of seven years strove to govern the realm without any legislative assistance. It is possible that, in the course of this gloomy interval, when England seemed to have sunk under the feet of a single despotic ruler, even far-seeing men began to despair of the ultimate result of the struggle with the occupant of the throne, and looked to the Colony beyond the Atlantic as a refuge from tyranny for unborn generations of Englishmen, and the home of free institutions for centuries to come. It was a natural and a noble view to take, which time was to realize to an extent not anticipated even in their most exalted moments of inspiration and prophecy by that band of patriots and statesmen who, after 1618, administered from London the affairs of Virginia.

Gondomar, the Spanish Ambassador in England, became, at an early date after his arrival, convinced that the English had no serious intention of abandoning the Colony. More and more deeply impressed with the determined spirit of the London Company, he used every opportunity to sow seeds of dissension between that body and the King, and to plant thorns of distrust in the royal mind. He warned the credulous monarch that, although the Company might put forth a fair pretence for holding the quarter courts, yet his majesty would, in the end, find that these courts were but a “seminary for a seditious Parliament.”<sup>2</sup> These

<sup>1</sup> Brown’s *English Politics in Early Virginia History*, p. 47.

<sup>2</sup> See *Life of Nicholas Ferrer*, by his brother, John Ferrer.

memorable words expressed the truth with extraordinary precision, and their effect on James's mind was, no doubt, all the more lasting because he himself had been drawn to the same conclusion by his own independent observation. After Sir Edwin Sandys became Treasurer of the Company in 1619, the King, though he had, by the charter of 1609, formally delegated his powers, showed an ever-increasing disposition to intermeddle with its affairs; and in this, he was influenced by two reasons, which revealed the general bent of his nature: first, opposition to the Company, on the ground of its liberal principles in the sphere of English political life; and secondly, a desire to resume his original autocratic control of the Colony now that it had proved to be successful, and no extraordinary pecuniary outlay was likely to be necessary on its account. Apprehension of expense and fear of complications with Spain,—a combination of niggardness and timidity highly characteristic of the man,—had alone moved him to transfer all direct power over Virginia to the Company in 1609. By 1618, it was clearly perceived that, should the Colony's affairs be only carefully administered, it would soon attain to a great prosperity at no additional cost; and the expectation of Spanish interference by arms had also gradually grown less in the light of the fact that, in spite of warnings and menaces, Spain had been guilty of no overt act looking to the removal or destruction of the settlers.

Southampton, Sandys, and Nicholas Ferrer, the leading spirits among the members of the liberal section of the London Company, were three of the most remarkable men of that age, whether we consider them from the point of view of eloquence, knowledge, virtue, integrity, wisdom, or energy. Sandys occupied the



office of Treasurer only during a single term of twelve months. When in 1620 with a great show of approval he was proposed for re-election, a messenger from court announced that the King strongly objected to his continuation in the position. Sandys, wishing to avoid all cause of difference and dissension, refused to permit his name to be used. Three names were brought forward, two of which had been suggested by James himself. When the poll was proclaimed, it was found that the royal nominees had received only a few votes, while Southampton, the nominee of the Company itself, had been chosen by an extraordinary majority, a proof of how little the members had been intimidated or bent by the royal action; and also of their determination to offer a rebuke to that action, which would not soon be forgotten.

Two years before the occurrence of this remarkable scene, the Company had granted to the people of Virginia, among other rights, one supreme right, which was to constitute the beginning of civil liberty in the remote West. This great right, which, together with the rights associated with it, was bestowed for the express purpose of establishing "an equal and uniform kind of government" in the Colony, was embodied in the noble series of instructions ratified at the quarter court convening November 28, 1618, a date which should be among the most celebrated in the history of the English-speaking race. By the provisions of this epoch-making document, the new Governor, Sir George Yeardley, was authorized to call together a General Assembly, consisting of the Governor and Council of State, and two Burgesses chosen by popular election from the body of the inhabitants of each town, hundred, or group of plantations. It was noted at the time when

this right of representation in an Assembly of their own was bestowed on the people of Virginia that a comet of remarkable brilliance appeared on the face of the heavens; and so long as it remained visible (and it continued to be seen until December 26th), Yeardley deemed it inauspicious to set sail from the English shores. The Colony at that stage of its growth was too insignificant to be associated in the minds of Englishmen with the great natural phenomenon which, for so many weeks, caused such widespread awe and consternation; but not since the Reformation had any event, with the exception of the first settlement at Jamestown itself, occurred in the history of the English people which, in far reaching consequences of incalculable importance, deserved better to be heralded by some flaming sign in the dome of the midnight sky. Perhaps, the conjunction was noticed by those thoughtful men to whom the Western Continent was indebted for this guarantee of its ultimate freedom and independence; and they may well have disregarded the superstition of the age and looked upon that fiery portent, not as an indication of the approach of some malignant change, but of a change which was to confer inestimable blessings upon mankind.

Not content with granting the right to call an Assembly, the Company two years later took steps to have codified a series of ordinances, which, from some points of view, bore a close resemblance to a written constitution. In April, 1620, Sir Edwin Sandys withdrew into the country with instructions from the previous quarter court to use the quiet and leisure of his retirement to go over the body of the English laws, and under the guidance of the information acquired from this and other sources, to frame a general system

of rules for the permanent administration of the Colony's affairs.<sup>1</sup> The object of this set of regulations, the first draft of which was thus prepared by one of the most distinguished, upright, and fearless statesmen of that age, and afterwards hammered into final shape by the deliberations of various committees, was declared at the time to be to settle in Virginia "such a form of government as might be to the greatest benefit and comfort of the people; and thereby all injustice, grievances, and oppression might be prevented, and kept off as much as possible from the Colony."<sup>2</sup> During the first two centuries of American history, there was only one other undertaking of the same general kind comparable in spirit, if not in lasting results, with this successful effort of the Company to supply a framework of written laws for the preservation of an ordered government in Virginia, the protection of its interests, and the advancement of its general prosperity,—this was the drafting of the Federal Constitution by the fathers of the Republic, who were guided by the same extraordinary forecast, inspired by the same liberality of opinion, and animated by the same profound devotion to their country.

When Wyatt, the successor of Governor Yeardley,

<sup>1</sup> Abstracts of Proceedings of Va. Co. of London, vol. i., p. 55. Governor Yeardley had requested for his "better direction" a code of general regulations. Committees had been appointed to frame the laws, but owing to press of business had been unable to do so.

<sup>2</sup> These words are quoted from the Minutes of the Company in Brown's *English Politics in Early Virginia History*, p. 40. The General Committees appointed July 17th were impowered to select from the laws of England such as were suitable for adoption in the Colony. They were also to examine the charters, orders, instructions to Governors, and Acts of Assembly for the same general purpose; see p. 34.



arrived in Virginia in October, 1621, he brought with him a model scheme of government which had been formulated by the ablest members of the Company. Under the various provisions of this scheme, the Governor and Council of State were to be appointed by that body; the General Assembly, composed of Governor, Council, and Burgesses, was to be called together at least once a year; each town or settlement was, by the suffrages of its inhabitants, to choose annually two Burgesses; the Governor was to possess a negative voice in the framing of legislative acts, but even after he had given his approval, no law was to become final until the King's assent to it had been received.<sup>1</sup> Such were some of the political features of this memorable ordinance.

What was the result of these wise and liberal measures? At a time when Parliament had ceased to meet, in consequence of the King's determination to rule without allowing that body an opportunity to interfere, the General Assembly of Virginia was convening annually in conformity with the written laws framed by the Company, and was giving a full voice to the wishes, and removing by wise enactments all the grievances, of the people. At a time when England seemed to be destined to become a monarchy in which the sovereign's caprice or judgment was to be the final expression of the law, Virginia was governed in accord with the requirements of a code only to be violated by those in charge of the administration of affairs at the risk of the heaviest punishment. Insignificant in wealth and population as the Colony was at this time, and remotely situated from the Mother Country, the political contrast presented by it, while controlled by a body of far-sighted

<sup>1</sup> Hening's *Statutes*, vol. i., pp. 110-113.

English statesmen, distinguished for their opposition to the encroachments of the royal prerogative, must have deeply impressed the minds even of those Englishmen who took no part in that resistance.

No one understood more clearly than James himself the lessons which this contrast might enforce in the future, and the consequences dangerous to the power of the monarchy which it might precipitate. There had already sprung up in the Company a small but very persistent and determined faction, who, for their own purposes, were prepared to aggravate the King's growing hostility to the corporation. It was not long before James took the first step towards the revocation of its charter; this consisted of appointing a set of Commissioners to investigate the condition of the Colony. The first results of their inquiry were embodied in a report delivered to the Privy Council in July, 1623,<sup>1</sup> and as was to be expected from the committee's membership, the conclusions reached were highly unfavorable to the Company. That committee could hardly have chosen a time when the community's affairs were in a more confused state; only the year before, 1622, the great massacre had taken place, and famine and discouragement had very naturally followed from such an appalling destruction of life and property. There was now only too much truth in the Commissioners' statement that most of the persons who had emigrated to Virginia had perished by the ravages of disease, hunger, or the tomahawk; but they omitted to dwell upon the plantation's great prosperity just before the catastrophe occurred, and the assured prospect it possessed at that time of an extraordinary growth in wealth and popula-

<sup>1</sup> For synopsis of this report, see Brown's *English Politics in Early Virginia History*, pp. 48, 49.

tion in the near future. They declared, without real ground, that the failure of the Colony (which was only temporary and for a cause generally understood), was attributable to the conduct of the present officers and members of the Company residing in England; and they showed a shrewd knowledge of what would please the King by asserting that, had the autocratic form of government prevailing under the first charter been continued, instead of being "altered into so popular a course and amongst so many hands," Virginia's condition would have been still happy and fortunate.

Three months after this report—the tenor of which had been practically ordained before the committee left England,—had been delivered to the King, he gave orders that the Company should submit to its members' vote the question of surrendering its charter. Seventy ballots in all were cast, and only nine were in favor of giving up the letters-patent; and of the persons casting these nine, two were thought not to be entitled to a voice.<sup>1</sup> It is plain from this that the vast majority of the members were not disposed to yield to the burning wish of the King without a resolute struggle in defence of their rights. In the following January (1624), the Company having laid a petition before Parliament touching their controversy with James, a committee of that body was appointed to consider it, but before this committee could report, the King peremptorily ordered Parliament to leave the matter alone as foreign to its jurisdiction; and to this the members silently assented. As soon as the final report of the royal commission chosen to inquire into the Colony's condition was drawn up and delivered to James (which was only done after the return from Virginia of Pory, one of its

<sup>1</sup> British Colonial Papers, 1622-3, No. 48.



members), an action of *Quo Warranto* was entered, and the letters-patent permanently revoked.

Such was the end of the London Company, which was struck down by an irresistible blow at the moment when, under the direction of some of the ablest and noblest spirits in England, it was in a position to accomplish for the advancement of the Colony far more than it had ever done before. Whatever may be said of the administration of affairs in Virginia previous to 1618, whether that administration was, on the whole, conducted without remarkable wisdom, or whether it was the most sagacious permitted by circumstances, the period in the Company's history lasting from 1618 to 1622, when the great massacre occurred to interrupt its plans, to dishearten its friends, and to give a weapon of attack to a hostile faction, is one of the most memorable in the annals of the English people, and will always reflect imperishable honor upon the names of Southampton and Sandys, and the staunchest of their supporters. Had the letters-patent not been recalled; had the Company been sustained and encouraged by a high-minded and patriotic King; had no controversy arisen to confuse its singleness of purpose; had it been allowed, under the guidance of men of liberal opinions and profound wisdom, to continue indefinitely the work of promoting emigration to the Colony, of establishing schools and colleges, of building churches, of diversifying agricultural products, of fostering manufactures, of defending the people from foreign invasion, of protecting all forms of popular rights, and of ensuring a beneficent rule in general, there can be little doubt that Virginia's progress during the Seventeenth century would have been far greater than it really was under the direct rule of a dynasty combining preposterous

notions of Divine Right with a spirit of bigotry, corruption, and personal depravity to a degree such as the world has rarely witnessed.

How keen was the feeling prevailing in the Colony against those who had encouraged the King to recall the charter was shown by a letter signed by Governor Wyatt, the members of the Council, and the House of Burgesses, and written in anticipation of the Company's overthrow. These were the principal representative men in Virginia; and there is no reason to think that, in this letter, they failed to reflect the general opinion of its inhabitants. "Our prayers," so this memorable communication ran, "solicit his majesty's tender compassion not to suffer his poor subjects to fall into the hands of Sir Thomas Smythe, or his confederates, who have lately abused his majesty's sacred ears with wrong information, but graciously protect them (the colonists) from growing storms engendered by faction."<sup>1</sup> The existence of this faction—which would never have been formed had the King been thought to favor the Company—was brought forward by the members of the cabal itself as one of the chief justifications for the charter's revocation. Sir Thomas Nethersole, writing to Sir Dudley Carleton in July, 1624, and referring to the commission of Privy Councillors and others nominated to assist the King in preparing the new patent, declared that "the reformation intended is that there shall be a company for trade, but not for the government of the country, which his Majesty will take care of by such orders as shall be made by him with the advice

<sup>1</sup> British Colonial Papers, vol. iii., No. 21. The leaders of the faction were Earl of Warwick, Sir Thomas Smythe, Sir Nathaniel Rich, Sir Henry Mildmay, and Alderman Johnson; see letter of Chamberlain to Carleton, Dom Corr., James I, vol. cxliii., No. 22.

of those Commissioners and of his Privy Council, and thus to avoid the faction which hath grown in the Company, the populousness of the government having been also otherwise displeasing to his Majesty.”<sup>1</sup>

Orders were now published that no ship should leave England for Virginia until the Commission had framed a new form of government for the Colony. The reason given in explanation of this action was that the people, knowing only that the Company had been upset, would be left in doubt as to whether they were subject to the authority of the persons then in control of the local administration of affairs. In reality, disaffection to the proposed change was feared; and apprehending lest the inhabitants should by some means hear of the recall of the letters-patent before all the arrangements were matured, and break out into serious distractions, Sir Robert Heath, the Attorney-General, urged that commissions should be sent to some of the principal citizens empowering them to fill the most important offices until the framework of the new form of government had been completed. His advice was followed.<sup>2</sup>

<sup>1</sup> Dom. Corr., James I, vol. clxix., No. 14.

<sup>2</sup> British Colonial Papers, vol. iii., Nos. 17, I., 18, 19. Pory carried these temporary commissions to Virginia.



## CHAPTER III

### Government under the Crown

**I**T was a happy event for the Colony that James died so soon after the revocation of the letters-patent, as there was a strong probability that, had he lived, he would have recalled all the popular rights granted in the Company's instructions to Governor Yeardley in 1618, including the right to representation in a local assembly. Sir Thomas Smythe also passed away the same year, and thus two powerful personal influences hostile to the best interests of the plantation oversea were suddenly and permanently extinguished. In May, 1625, the new King issued a proclamation outlining the plan of government for Virginia in its restored character as a direct dependance of the Crown. He declared in this document that it was absolutely necessary that the government of the Colony should be made to assume a form which would bring it into complete harmony with the one prevailing throughout the rest of the English dominions; and that whilst it might be proper to leave all matters of trade and commerce to the control of a company, it was not fit or safe to leave to such a body the administration of political affairs, however insignificant those affairs might appear to be in reality. Having thus, by way of preamble, announced certain general principles considered by him indisputable, Charles proceeded to lay the primary

responsibility for the government of Virginia on a council resident in England, which, in all important business touching the Colony, was to be subordinate to the Privy Council, and in all matters, small or great, subordinate to the King himself. The Governor and the Council in Virginia were to be subject to the control of the resident Council in England. It will be seen from these particulars that the new government adopted for Virginia by the Crown was substantially the same as the one in operation during the existence of the charter of 1606, the first granted by James, as we have seen.<sup>1</sup>

But what was far more important than any of these provisions was the order given by the King at a later date that the House of Burgesses should continue to meet regularly for the passage of laws. In confirming this right, he was not so much following the example set by the Company, as, like that body, carrying into practical effect the general promise embodied in the first charter, namely, that the citizens of Virginia "should enjoy the same liberties, franchises, and immunities" as if they too had been born and still resided in England. Nor did Charles dispute the momentous claim put forth by the Assembly that it constituted the only power which could legally impose any tax on the people of the Colony.

It was Yeardley's singular good fortune to be the Governor who brought over to Virginia the instruction to summon the first Assembly that met during the Company's supremacy, and also the Governor, who, ten years later, proclaimed the first royal confirmation of that great right after the immediate supervision of the Colony's affairs was again undertaken by the

<sup>1</sup> Proclamation of Charles I, *Va. Maga. of Hist. and Biog.*, vol. vii., p. 133.

Crown. In the interval before his arrival, Wyatt, by the provisions of the temporary commission sent to him very soon after the Company's dissolution, continued to perform the duties of the Governor's office, but for the time being no General Assembly convened. The authority to call it together was evidently not embraced in this temporary commission,—an indication that James had decided in his own mind to withdraw the right altogether. As the Governor's power to summon the Assembly had been cancelled by the revocation of the letters-patent, this body could not legally meet without the royal renewal of that right. Wyatt seems to have hesitated to administer the affairs of the Colony on the responsibility of the Council and himself alone; and as the nearest approach to the former legislature practicable, was, at this time, in the habit of inviting the principal citizens to take part in their deliberations on stated occasions. All the public documents issued as expressing the conclusions reached in these conferences were drawn in the name of the "Governor, Council, and Colony of Virginia assembled together."

Yeardley arrived at Jamestown in 1626. He recognized as clearly as Wyatt himself that all the departments of colonial administration could not be carried on by the Governor and the Council alone, acting under general instructions from the Crown in England. The duties of these officers, both executive and judicial, were already very heavy owing to the community's rapid growth in wealth and population; and to add to them all the legislative duties as well was to impose a burden they could not long sustain, however much they might desire to do so in consequence of the greater authority which the concentration in



their hands of all the work,—executive, judicial, and legislative,—would have necessarily given them. No doubt, after their extended experience, Wyatt and Yeardley saw plainly enough that Virginia's remoteness from the Mother Country would in itself alone in the end force the restoration of the General Assembly; that a colony increasing so steadily in number of inhabitants could not be forever governed from across such a vast expanse of sea; and that the exercise of legislative powers, even if the Governor and Council possessed no executive and judicial ones, would in time be too exacting for them, however able, industrious, and devoted to the public good they might be. It was this conviction which led Wyatt to call in the assistance of the foremost citizens when questions of public interest were to be discussed; and the same conviction induced Yeardley to lend a willing and sympathetic ear to the popular appeal,—which he was so urgently requested to lay before the King,—for the restoration of the Assembly as a part of the legislative framework of the Colony's government. Charles evidently hesitated for some time to renew this body's right to meet as formerly; but his advisers had the practical wisdom to perceive that Virginia could no longer be governed precisely as it was previous to 1609, during the first charter's existence, when the number of settlers did not exceed a few hundred. The royal instructions to call the Assembly together again were brought over to Virginia by William Capps, and in March, 1628, delivered to Yeardley, then residing at Jamestown. The Governor, amid general rejoicings over so happy an event, hastened to summon the House of Burgesses to meet<sup>1</sup>; and thus the General Assembly's right to convene was perma-

<sup>1</sup> Brown's *First Republic*, p. 647.

nently restored,—a right which has never since been even questioned.

Under the new form of administration, the Governor, the members of his Council, the Treasurer, and the Secretary of State, were to be appointed by the King, whilst the members of the House of Burgesses were to be chosen by the votes of the people. The substance of the change was that the Crown and not a corporation was to exercise the direct controlling power. The old London Company, however, did not abandon at once all hope of recovering its former privileges. Charles having, in 1631, nominated commissioners, with instructions to report on the most feasible and promising means of advancing the Colony's welfare,<sup>1</sup> this committee, being largely composed of persons formerly members of the London Company, petitioned the King for the charter's renewal as the measure most likely to assure the plantation's lasting prosperity. They recommended, among other things, that the new charter should contain the following provisions: first, that the Colony should be governed by a commission of twenty-five persons, including the President, who were to reside in England, and from thence to communicate their orders to the Governor, Council, and Burgesses in Virginia in a periodical series of instructions; second, that this commission should possess the right to decide all controversies arising between the planters and the Company, or between the planters themselves, who, however, were to enjoy the right of appeal to the King or the Privy Council; third, that it should be impowered to elect all inferior officers, and also to recommend to the King the names of the persons deemed by it to be fit to be chosen for the highest

<sup>1</sup> British Colonial Papers, vol. vi., No. 14.

positions; and fourth, that it should also be impowered to reject, if it saw proper, all ordinances adopted by the Governor and Council, and all laws passed by the General Assembly.

This prayer for a new charter, together with the provisions it contained raised at once a vigorous opposition; those hostile to the proposed change declared that the whole influence of the old London Company tended to breed hatred of the King as a man, and of monarchy as a principle; that the recommendation to revive that body had its origin, not in any practical demand for the restoration of its control, but in the displeasure which its surviving members still felt in recalling the fact that their letters-patent had been taken away; that the renewal of these letters-patent would alienate from the Crown quit-rents now valued at two thousand pounds annually; that since the old charter had been revoked, the Colony had made extraordinary progress in population, in means of subsistence, and in trade; and finally, that there was no more need of a company to govern Virginia than there was of one to govern Ireland, since Virginia, like Ireland, was an integral part of the Kingdom.<sup>1</sup>

Charles seems to have been for some time in a state of vacillation; at one moment, he appeared to lean towards those who were anxious for the new letters-patent to issue; at another, towards those who were opposed to such a grant. Probably, the new charter would have been formally renewed but for the demand so urgently pressed by many of the leading citizens of Virginia that the patent under which Lord Baltimore held Maryland should be recalled, and that part of the English dominion in America be reabsorbed into the

<sup>1</sup> British Colonial Papers, vol. v., No. 31; vol. vi., Nos. 30, 32.



older Colony, to which it was thought to belong of right. It would seem that the King so far yielded to the commission's recommendations as to direct the Attorney-General to draw up the new charter, but there is no proof that it ever passed the seal; and if it did so, it was certainly never delivered with a view to being put into immediate operation.<sup>1</sup>

In 1640, the General Assembly, being anxious to secure a renewal of the rights granted to the colonists by the old Company, sent to George Sandys, then in England, a petition for delivery to the King embodying their wishes on this point. This petition was really presented to Parliament, which was known to be favorable to the prayer it contained.<sup>2</sup> Two years later, not long after Berkeley became Governor, the new General Assembly, yielding to his powerful influence, formally declared its opposition to the old charter's renewal, and the King, on being notified of this act, thanked his faithful subjects oversea; not that he had entertained the design of restoring the letters-patent, he said, but it was highly pleasing to him to be confirmed in his determination to deny all requests to that effect.<sup>3</sup>

It would appear that what was really desired by the people of Virginia was not a charter which would transfer the government of the Colony from the Crown to a company,—such as existed during the long interval between 1609 and 1624,—but a charter which would recognize and confirm as a permanency all those political, commercial, and territorial rights enjoyed by them

<sup>1</sup> *Va. Maga. of Hist. and Biog.*, vol. viii., pp. 41-3.

<sup>2</sup> Randolph MS., vol. iii., p. 241; Brown's *English Politics in Early Virginia History*, p. 95 et seq.

<sup>3</sup> Colonial Entry Book, 1606-62, p. 237.

before the Company was abolished. At present, these were dependent upon the caprices and interests of the King, who at any time might order their recall. The deliberate grant of Maryland to Baltimore, although it was embraced in the area belonging to Virginia by the provisions of the early charters, had revealed to the people of the latter Colony the precariousness of their rights, should Charles, moved by some hostile influence, be disposed to violate them. In spite of protest and remonstrance, the country lying immediately north and east of the Potomac was never restored; in addition, the trade of the plantations suffered severely by the operation of the Navigation Acts; but the political rights of the people, as well as their title to their lands were, as time went on, fully protected by repeated confirmations, although not embodied in a great formal charter as had been so ardently desired. The difficulties and anxieties in which Charles became so deeply involved at home by his struggle with Parliament left him little time to give attention to the Colony's affairs, and it was perhaps due to this fact,—in part at least,—that this monarch's reign, which bore so heavily on England, was marked by no extraordinary acts of oppression oversea.

During the great Protector's rule, the government in Virginia reflected in a general way, the spirit of the memorable resolution adopted by the Rump Parliament: "The people are under God the original of all just power."<sup>1</sup> In this too brief interval, when the whole body of the population exercised an extraordinary influence on the course of political events, the House of Burgesses practically controlled the administration of public affairs. The Governor and Council

<sup>1</sup> Green's *Short History of the English People*.

themselves were elected by it, and thus the highest officers of the Colony, being creatures of its breath, were submissive to its voice as long as they desired to retain their positions. "The Commons of England," the Rump Parliament had also affirmed, "being chosen by and representing the people, have the supreme in their nation; and whatsoever is declared for law by the Commons, hath the force of law, and all the people of this nation are concluded thereby."<sup>1</sup> So accurately did these words show the scope of the power at this time possessed by the House of Burgesses that they might easily have originated in that body; no doubt, they were known to its leading members; and the principle they proclaimed was accepted as justification for the establishment of a highly popular form of government in Virginia. Indeed, that government was more popular than the one prevailing in England, for over England the mighty shadow of Cromwell was projected, whilst that shadow, vast as it was, was not sufficiently vast to reach across the Atlantic; or if it did so, it was not portentous enough at that distance to suppress the spirit of popular freedom there, but instead left it strong and unconfined.<sup>2</sup>

As in England, so in Virginia the restoration of the Stuarts was followed by a period during which the spirit of reaction revealed itself in nearly every de-

<sup>1</sup> Green's *Short History of the English People*. The first Governor and Council appointed after the surrender in 1651 seem to have been named by the Commissioners of Parliament who arrived in Virginia during the course of that year.

<sup>2</sup> In England, Government by an Assembly was fully tested between 1649 and 1651 and ended in failure. The Executive in England in the person of Cromwell finally overshadowed the whole administration. In Virginia, on the other hand, the Governor became increasingly subordinate to the Assembly.



partment of public affairs; and the evils thus occasioned slowly accumulated until they brought about the most serious insurrection recorded in American history previous to the Revolution. In a fine burst of enthusiasm, the impulsive Berkeley, then younger and more generous in his feelings, had, in 1651, exclaimed that the "sun did not look upon a people more free from oppression" than the Virginians.<sup>1</sup> Sixteen years later, these words on his lips, had he had the assurance and hardihood to utter them, would have aroused the indignant protest of all but his own followers. The series of wrongful acts leading up to the rebellion of 1676 were among the most exasperating that any section of the American people have ever been called upon to endure for the same length of time. Restrictive navigation laws; onerous and multifarious taxation; measures for affording Burgesses very high remuneration without relieving the counties of additional expense on that score; the continuation of the same Assembly for fourteen years because Berkeley had found its members to be submissive and ready instruments for his purposes; the self-perpetuation of the vestries in the same spirit, in contempt of the people's right of election; the concentration of all the offices and all the power in the hands of a few possessing no legal claim to such privileges; the persecution of religious sects; the subordination of the safety of the whole community, threatened with Indian invasion, to the interests of the Governor in the fur trade, a trade which would have been destroyed by a vigorous campaign against the savages,—such were some of the

<sup>1</sup> *Va. Maga. of Hist. and Biog.*, vol. i., p. 77. "There is not here," Berkeley added, "an arbitrary hand that dares to touch the substance of either poore or rich."

more powerful influences which precipitated the Insurrection of 1676, a movement deserving as much success as the one that, one hundred years later, resulted in the independence of the Colonies.

During this part of his career, Berkeley was only too faithful a servant and too slavish an imitator of a King, who, without for a moment consulting the wishes of his subjects oversea, by a few strokes of his pen transferred the whole of Virginia to the practical sovereignty of two members of his Court. In the grant to Arlington and Culpeper, it was provided that the beneficiaries should, in the future, receive all the escheats, quit-rents, duties, reservations, and the like then belonging to the Crown; and that they should have the power to issue patents, to nominate sheriffs, to present clergymen to vacant livings, to establish new parishes and counties, and to use a separate seal.<sup>1</sup> It was not remarkable that so complete a gift of the Colony, just as if it had been a mistress of whom the royal fancy had tired, should have aroused consternation and indignation among its people, hardened though they were, in a measure, to the callous disregard of their rights and interests so often displayed by those in power. Agents were sent to England in the hope of securing a charter which would render such grants in the future impossible. The charter finally obtained by these agents, after the most earnest solicitations, passed the signet, but not the great seal, as the rebellion soon furnished a pretext for recalling the instrument.

Fortunately, the Revolution of 1688 occurred to remove the people of Virginia and England alike from the control of a dynasty seeking as far as lay within its

<sup>1</sup> Henning's *Statutes*, vol. ii., p. 427.

reach to abridge every form of popular right. The anxieties felt during the earlier periods of the Colony's history had not, however, entirely passed away. In 1691, Jeffrey Jeffreys was appointed commissioner for Virginia in London, and in the same year, he was instructed to obtain, first, a confirmation of the power exercised by the General Assembly of making laws not repugnant to the general laws of England; secondly, the royal approval of the proposition that no tax should be laid on the people of the Colony without the previous assurance of their consent; and, finally, a full guarantee that the Virginians and their posterity should enjoy those various "privileges, franchises, and immunities" belonging by birth to every English subject, and should also have the full benefit of the great charter and all other statutes and state papers regulating the liberty of the English citizen.<sup>1</sup> It would appear that Jeffreys was not successful in securing the formal document desired, for, in 1695, the House of Burgesses petitioned the King to grant the charter drawn up in 1676, which, as we have seen, was cancelled only after the news of the Insurrection had been received.<sup>2</sup> However, the general rights of all English subjects, whether residents of the Colony or of England itself, were now so amply protected that there was no urgent reason why these rights, as enjoyed by the people of Virginia, should be confirmed to them in a formal instrument.

<sup>1</sup> B. T. Va., May 22, 1691, No. 23.

<sup>2</sup> *Ibid.*, Entry Book, vol. xxxvi., p. 84.



## CHAPTER IV

### English Board of Control

WHAT body in England exercised direct control over the affairs of Virginia after the revocation of the Company's letters-patent in 1624? Previous to that year, when the King had occasion to communicate a wish or order respecting the Colony oversea, it was done by him through his Privy Council. Even in 1621, the Company's power and prosperity being then at their height, the Governor was instructed to advise with the Privy Council whenever matters of great difficulty and importance arose. In 1626, the charter having been recalled, the same officer addressed himself to the Lords Commissioners chosen to settle the affairs of Virginia; but, along with his Council, he is also found the same year, making a report directly to the Privy Council.<sup>1</sup> In 1626 also, the Instructions of Yeardley, who had been recently reappointed Governor of the Colony, were signed by the latter body<sup>2</sup>; and the Privy Council also signed the Instructions which, three years later, were given to Governor Harvey.<sup>3</sup> In 1631, the charges brought against Dr. John Pott for improper conduct while filling the position of Governor were

<sup>1</sup> British Colonial Papers, vol. iii., No. 1; Randolph MS., vol. iii., p. 203.

<sup>2</sup> Randolph MS., vol. iii., p. 197.

<sup>3</sup> British Colonial Papers, vol. v., No. 94, I.

investigated by a body known as the "Commissioners for Virginia" and it was by their representations as to the groundlessness of these accusations that the King was led to confer a pardon.<sup>1</sup> During this year, however, the Acts of Assembly were sent directly to the Privy Council; and it was to this body that the House of Burgesses applied, when, in 1631-2 also, they were anxious for the King to continue all the grants, liberties, and privileges bestowed since the abolition of the Company.<sup>2</sup>

Charles I, in 1632, created a Board of Commissioners to take into consideration the former condition of Virginia; the commodities to which its soil was best adapted; and the most promising and practical means of increasing the prosperity of its people. This Board was empowered to summon witnesses, examine papers, and obtain information by every means in its reach; and its members were required to lay a full report before the King from time to time.<sup>3</sup> It was to this Board that the Governor and Council addressed themselves when they had matters of importance to communicate touching the affairs of the Colony. In 1633, when numerous petitions were entered for large tracts of land, the Governor and Council wrote, not to the Privy Council, but to these Commissioners in approval of the proposed grants.<sup>4</sup> That this Board, however, was designed to be only temporary, is shown by the fact that, in 1634, Charles appointed a commission of twelve persons, headed by the celebrated Laud, Archbishop of Canterbury, to overlook all the English

<sup>1</sup> British Colonial Papers, vol. vi., Nos. 18, 20.

<sup>2</sup> Randolph MS., vol. iii., p. 219.

<sup>3</sup> *Ibid.*, pp. 220-1.

<sup>4</sup> *Ibid.*, p. 224.

Colonies. The powers bestowed upon this commission were very comprehensive: its members were authorized, for instance, to pass orders and laws for civil and criminal administration, to punish ecclesiastical offences by fines and imprisonment, to remove governors, to establish courts, to appoint judges and magistrates, and to utter the final word as to all charters and patents.<sup>1</sup> The first important business which the commission was called upon to settle in connection with Virginia arose out of Harvey's expulsion from the Colony. The letters written to it by the deposed Governor, who had raised a loud outcry over his treatment, were referred to the Attorney-General, and his opinion seems to have determined the case.<sup>2</sup> During the following year, the various communications from the Governor and Council at Jamestown to the English Government were addressed to the "Lords Commissioners of the Foreign Plantations," the official title of this powerful Board of Control.<sup>3</sup> Two years later, the Privy Council is found referring all petitions made to them directly to what they designate as the "Sub-Committee for Foreign Plantations," an indication that the work done by the Commission was really done by a specially appointed section of it. This sub-committee was ordered to report on the petitions mentioned, not to the Commission itself, but to the Privy Council,—

<sup>1</sup> British Colonial Papers, vol. viii., No. 12. The members of this powerful commission were the Archbishops of Canterbury and York, the Lord Keeper, the Lord High Treasurer, the Earls of Manchester, Arundel, and Dorset, Lord Cottingham, Sir Thomas Edmond, Sir John Coke, and Sir Francis Windebanke.

<sup>2</sup> British Colonial Papers, vol. viii., No. 69.

<sup>3</sup> This was also the address used by Harvey in 1635 in writing to the Commissioners; see also Patent Roll 12, Car. I., Part 21, No. i.



a course not improbably followed when the matter for decision, though relating to one of the Colonies, had come before the latter body in the first instance.<sup>1</sup>

As soon as the Parliamentarians had taken an advanced position in opposition to the royal authority, one of their most important measures was to establish a Commission of their own, headed by Lord Pembroke, for the government of the Colonies. This Commission was appointed about 1643<sup>2</sup>; but some years later, when England had passed under the rule of the great Protector, all matters relating to Virginia and the other communities oversea were deliberated upon and settled by the Council of State for the Commonwealth. If that body found that it needed advice in order to reach a just and correct decision, it referred the question to some other department of the Government; for instance, all petitions and the like touching the ships engaged in the plantation trade were generally submitted by the Council to the Admiralty's consideration, with instructions to return a full report on all the points at issue. In the course of 1650, a resolution was adopted by the Council of State that, whenever it was deemed advisable, its members should choose a commission of five of their own number, who were to be known as the "Committee of Trade and Plantations," and were to be empowered to transact all that business relating to the Colonies which the whole Council had previously taken cognizance of.<sup>3</sup> Apparently, however, this was not designed to be a permanent committee, for, two years afterwards, a standing commission composed of twenty-

<sup>1</sup> British Colonial Papers, vol. x., No. 11.

<sup>2</sup> See Brown's *English Politics in Early Virginia History*, p. 99 et seq.

<sup>3</sup> Interregnum Entry Book, vol. xcii., pp. 5, 7.

one members selected from the Council of State were nominated to take charge of all matters coming before this body relating, not only to the Colonies, but also to foreign countries in general.<sup>1</sup>

After the restoration of the Stuarts to the throne, the general supervision of the affairs of Virginia and the other Colonies became at first the duty of a standing commission or council composed of the foremost officers of the Crown, such, for instance, as the Lord Chancellor, the Lord Treasurer, and the like great dignitaries. Any five of this imposing body were authorized to take into their immediate consideration the condition of all the Plantations; and they were to be held responsible for the proper government of the different communities oversea. All the communications from the heads of the local administration in these communities were to be addressed to this commission, which was to be designated as the "Council of Foreign Plantations." In a letter written by Berkeley to the Commission in 1662, he reveals its general powers in a few words: "Since his Sacred Majesty has been so pleased to erect so necessary a committee for us to instruct, encourage, and administer to ye performance of our duties for ye future, we will, with your permission, point out our laws, present them to you either for your approbation, amendment, or rejection."<sup>2</sup>

Fourteen years after the date of this letter, Virginia was subject to the control of what was known at this time as the "Committee on Plantations," or the "Lords Commissioners of Plantations,"<sup>3</sup> a body chosen entirely from the members of the Privy Council, and bearing

<sup>1</sup> Interregnum Entry Book, vol. xcvi., p. 8.

<sup>2</sup> British Colonial Papers, vol. xvi., No. 78.

<sup>3</sup> Colonial Entry Book, vol. xcvi.; see entry for March 1, 1675-6.

the same relation to it as was borne to the Council of State by a similar committee nominated during Cromwell's supremacy. The Lords Commissioners, writing in 1676 to Berkeley, informed him that the King had abolished the "Council of Trade and Foreign Plantations," which had previously exercised a general supervision over the Colonies, and apparently was composed of men not all members of the Privy Council itself. Although a general committee of that Council was appointed to take its place, the particular care and management of all things relating to the Plantations was imposed on a select number of this committee, who thus constituted a distinct board or sub-commission of itself.<sup>1</sup> This board was, in 1677, designated as the "Lords of the Committee of Council for Trade and Plantations."<sup>2</sup>

It was not until 1696 that the commission in charge of the Colonies assumed its permanent form as well as its final name; in the course of that year, the celebrated "Board of Trade and Plantations" was established<sup>3</sup>; which seems to have resembled the committee immediately preceding it in time in every way except in the fact that its composition was not necessarily limited to persons belonging to the Privy Council.

Although the numerous committees exercising, during the far greater part of the Seventeenth century, a strict supervision over the affairs of the Colonies, differed to a considerable degree in their names and the character of their membership,—the members of some being drawn from the Privy Council alone, and of others apparently from the body of influential

<sup>1</sup> Colonial Entry Book, vol. lxxx., pp. 47-52.

<sup>2</sup> *Ibid.*, p. 152.

<sup>3</sup> Campbell's *History of Virginia*, p. 348.



Englishmen,—nevertheless, the powers enjoyed by them all were substantially the same. In the instance of each, the transaction of business was, in theory at least, subject to the general oversight of the King; but it is not probable that much of the work done by them ever really passed under the monarch's eyes, as it was, to a large extent, purely routine in its nature.

## CHAPTER V

### Loyalty to the Throne

THERE are numerous indications that, throughout the Seventeenth century, the people of the Colony, as a body, entertained a very strong feeling of loyalty to the throne; nowhere, indeed, in the British dominions, during that period, was the allegiance to the King based more firmly on popular reverence for the principle which he represented, however much cause some of the monarchs may have personally given for dissatisfaction and discontent. As early as 1643, the punishment imposed upon any one convicted of having spoken scandalous words about the King and Queen was banishment from Virginia.<sup>1</sup> At that time, the civil war had already broken out in England, and the battle of Edgehill, in which the royal forces had been worsted, had been fought. In the Colony, no sympathy was felt by any large body of influential persons for the side of the Parliamentarians, and a disapproving comment on Charles's conduct, or a slighting or sarcastic reference to his followers, exposed any one uttering it to the danger of arrest.<sup>2</sup> In 1648, the year before Charles lost his head on the scaffold, and when the monarchy had fallen in ruins, a loud com-

<sup>1</sup> Robinson Transcripts, p. 238.

<sup>2</sup> See case of Capt. Ingle, who aroused the anger of Argoll Yeardley, a Councillor, by speaking of the cavaliers as "Rattletraps"; Northampton County Records, Orders Aug. 31, 1643.

plaint was raised by some persons that the Governor and Council, in impressing citizens to serve as soldiers simply by warrant, without the authority of an Act of Assembly, were guilty of an unjustifiable infringement on the liberties and rights of the people. In reply to this charge, the Assembly itself declared that these officials had derived their power directly from the King through repeated instructions to their predecessors as well as to themselves; and that it was very unbecoming in any one to fail to acknowledge the extraordinary care and forethought shown by his Majesty in conferring such a power on the Governor and Council, as by means of it they were always prepared to defend the Colony without any delay.<sup>1</sup>

When news reached Virginia that Charles had been beheaded, the General Assembly boldly denounced "the treasonable principles and practices" of the all-powerful party in England responsible for that "crime," and which, not content with regicide, was systematically "aspersing the memory of the martyr," and denying and scoffing at the "Divine Right of Kings." Any one in Virginia heard defending its flagrant and impious proceedings,—so the General Assembly proclaimed,—should be taken as an accessory after the act to the "murder" of the monarch; and whoever should venture to cast any reflection upon his conduct during life should be subject to such penalties as the Governor and Council should consider proper to impose. All persons known to have questioned the right of Charles II to succeed his father on the throne were to be arrested and punished as guilty of high treason.<sup>2</sup>

Such was the strength of the feeling entertained by

<sup>1</sup> Hening's *Statutes*, vol. i., p. 355.

<sup>2</sup> *Ibid.*, p. 361.



the General Assembly in favor of the King and Monarch at the end of that great struggle in which the King himself had lost his life, and the monarchy had apparently been utterly destroyed! No dictate of prudence, no weak leaning towards a side simply because it was victorious, was allowed to influence these zealous supporters of the principle of royalty. The civil wars had been carried on too far away from the Colony to affect seriously its inhabitants' interests; their material condition had not been injured by battles, sieges, and raids at their very doors, as had happened to their English kinsfolk; the political controversies involved in the contest between Charles and Parliament were too remote to be grasped by them as bearing on the welfare of all English subjects. So far as the bulk of the people of Virginia could see, the King was fighting for the preservation of his inherited prerogatives against a vast multitude of rebels; and that spectacle, greatly shocking their loyal feelings, aroused their indignant sympathy on his behalf. All Berkeley's influence, which at this time was very powerful, was directed towards confirming and spreading this sympathy. Whatever may have been his faults, he was not the person to allow his impulses to be controlled by suggestions that were purely politic; indeed, he had no toleration for any form of compromise; and in this great crisis, he probably omitted no opportunity to express his detestation of the Roundheads and his admiration for Charles's character and his devotion to his person. His influence was supported by that of the large body of Cavaliers who had found a refuge in Virginia, where their social accomplishments, experience in the Civil Wars, and fidelity to the throne, had given their opinions and sentiments extraordinary weight.

How firm was the Virginians' loyalty to the Monarchy in spite of the cloud of misfortune and despair which hung over it after Charles's death, was shown by the action of the justices of Lower Norfolk as late as 1651, when the King had been in his grave at least two years. On its being reported to them that John Townes had been heard speaking traitorous words against Charles II, they promptly issued a warrant for his arrest; and he was only released after he had given satisfactory security to appear before the General Court to answer for his offence. As he persisted "in his seditious ways and malignant terms" against the King, he was re-arrested, and kept in close custody until carried off by the sheriff to Jamestown. Townes, who followed the trade of a carpenter, does not seem to have possessed any influence; nor did he represent a segment of public opinion held by a great many others besides himself.<sup>1</sup>

In offering a determined front to the fleet dispatched in 1651 to the Colony by Parliament, Berkeley, no doubt, was fully aware that he was supported by the active sympathy of the overwhelming majority of the Virginian people of all classes. Among the very liberal terms secured by his boldness and firmness was one declaring that "neither the Governor nor Council should be obliged to take an oath to the Commonwealth, nor be censured for speaking well of the King for one year." Berkeley himself had very probably suggested the insertion of this provision, not for one year, but perhaps for an indefinite period. He was permitted by the same memorable articles to send a messenger to Charles II in Holland to inform him of the surrender.

<sup>1</sup> Lower Norfolk County Records, vol. 1646-51, p. 174; also Orders Oct. 30, 1651.

All persons residing in the Colony who had served the late King, whether in military or civil life, were guaranteed exemption from punishment, and the right to follow out their own lives as they should prefer.<sup>1</sup>

When news of the fall of the Commonwealth arrived in the Colony, Berkeley seems, with the entire approval of the people, to have resumed the performance of all the duties of the Governorship even before he was formally chosen to the position by the Assembly's votes in accord with the custom which, as we have seen, had prevailed during the time of the Protectorate.<sup>2</sup> The proclamation issued in Surry county announcing the restoration of Charles II to the English throne was a duplicate of all those publicly read at the

<sup>1</sup> British Colonial Papers, vol. xi., No. 46. The following shows the attitude of many persons even after the power of the Commonwealth had been firmly established in the Colony. It is possible, however, that Greene exaggerated his loyalty.

"To Honorable Col. Browne, the Humble Remonstrance of Peter Greene, giveth you to understand that the seducing year there was a strange horrid imposition by oath enjoyned on the people in general, but most especially upon the Commanders of the Collonie, of the which I was then one of the number, in the Behalfe of (*i. e.*, respect of) my King and Countrie, the which oath seemed so detestible and sacrilidgious to me that I did not only refuse it, but did likewise utterly detest the thoughts of it, being a most damnable hereticall imposition contrary to the fundamental laws of the Kingdom and my tender conscience; and withall did then in the face of the enemy that had then power to destroy my body, express and declare that I would suffer the execution of Death before my own doore than derogate from those kingly principalls which I had been ever naturally endowed with; this I have thought good to declare unto you, not that I desyre a captain's place according to succession, but that you would be pleased to consider ye endeavours and loyalty of ye King's antiente friends and acquaintance, not that it is my desyre to displace any now, but that my loyalty may be considered by some encouragement according to my Deserts; Peter Greene." *Surry County Records*, vol. 1645-72, p. 129, Va. St. Libr.

<sup>2</sup> See *Va. Maga. of Hist. and Biog.*, vol. vii., p. 314.



same time throughout Virginia: it declared that, immediately on the decease of Charles I, the English Crown, and the whole of the English dominions, had descended to his son as the next heir of the blood royal, and that his subjects in Surry faithfully submitted themselves to him as their lawful King. This proclamation was made in the presence of a large part of the population of the county assembled at the county seat in anticipation of the event; and we learn from the contemporary records that it was received with loud and joyful acclamations.<sup>1</sup> In York, the same happy occasion was celebrated by the expenditure of one barrel of powder in repeated volleys. The big guns used for this purpose belonged to Captain Fox, who was paid a liberal fee for lending them to the county. The trumpeters must have preceded and followed up the proclamation with a long and lively fanfare, for they were allowed for their services so large a sum as eight hundred pounds of tobacco. One hundred and seventy-six gallons of cider were provided for the people's consumption in drinking the health of the King. Nor were the authorities content to furnish fusillades, music, and liquor alone for the crowd in attendance: they also employed Rev. Philip Mallory to deliver a sermon in which the popular gratitude to God for the restoration of their rightful Sovereign should be voiced with the pious gravity and dignity worthy of so memorable an event.<sup>2</sup> After this, whoever dared to reflect upon the King or the royal government was severely punished. In the course of the following year, it having been reported to the justices of the same county that Thomas Cheney had

<sup>1</sup> Surry County Records, vol. 1645-72, p. 164, Va. St. Libr.

<sup>2</sup> York County Records, vol. 1657-62, p. 243, Va. St. Libr.

spoken "dangerous and unlawful words" of his "sacred Majesty," he was promptly arrested for the offence; and on his refusing to take the oaths of allegiance and supremacy, was hurried to the whipping post and there forced to submit to thirty lashes administered so vigorously that the blood flowed. It was afterwards proven that Cheney was not responsible for his seditious utterances as he had lost his reason.<sup>1</sup>

The loyalty of the upper ranks among the Virginian people was, perhaps, never greater than during the first fourteen years following the restoration of the Stuart dynasty; the reaction which showed itself to such a marked degree in England was reflected to an equal extent in every department of the Colony's affairs. This was due in part to the influence of Berkeley, who carried his devotion to the monarchy to a point not exceeded in extravagance by Charles's immediate followers; like them, he had made extraordinary sacrifices for his King; and when the King had come to his own, Berkeley, like them also, was disposed to think that his reward should be in proportion to what he had suffered. Under the system of the re-established monarchy,—all the political powers being concentrated to such an unprecedented degree in the hands of himself and the principal landowners,—it was only natural that, among the members of his class especially, the attachment to the throne should have become stronger than ever because so intimately bound up with their own pecuniary interests. Nor was it seriously shaken by the cool indifference to the Colony's welfare shown by Charles II in granting the whole of Virginia to two noblemen who had won his favor, although that act aroused such emphatic and outspoken opposition.

<sup>1</sup> York County Records, vol. 1657-62, p. 311, Va. St. Libr.

The agents sent to England in 1675 to protest against the patent to Arlington and Culpeper, and also to obtain a charter confirming the rights previously bestowed on the people of the Colony, declared very truly that, during the whole of the period since the Company's dissolution in 1624, the General Assembly had never passed a law in derogation of the royal prerogatives.<sup>1</sup> "The Virginians," they asserted, "are and have ever been heartily affectionate and loyal to the monarchy of England, and under that to their present government of Virginia, constituted, they humbly conceive, in imitation of it. The New Englanders have obtained the power of choosing their Governor, but the Virginians would not have that power, but desire that their Governor may from time to time be appointed by the King. The New Englanders imagine great felicity in their form of government, civil and ecclesiastic, under which they are trained up to disobedience to the Crown and Church of England, but the Virginians would think themselves very unhappy to be obliged to accept of and live under a government so constituted, although they might therewith enjoy all the liberties and privileges the New Englanders do."<sup>2</sup>

Such was the language used by Morryson, Ludwell, and Smith in their memorable petition to the King on behalf of the Virginian people; and perhaps there were no other three citizens of the Colony who had been made more competent by long experience and observation, to describe the real characteristics of that people, or who understood more thoroughly the spirit animating them in their attitude towards the throne.

Thomas Ludwell, writing to Lord Arlington, affirmed

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 527.

<sup>2</sup> Randolph MS., vol. iii., p. 331.



that Bacon and his followers had formed "vain hopes of taking the country wholly out of his Majesty's hands into their own."<sup>1</sup> If this statement was justified by fact at all, it was justified only when the rebellion had, by its own momentum, gone very much farther than Bacon himself had designed at the beginning of the movement. It is true that he urged resistance to the royal troops in the field should they be sent over, but it was with the reservation that this should only be done provided that they arrived before the aggrieved colonists could lay before the King their reasons for rising. Whatever may have been his secret ambition when the conflict between Berkeley and himself had reached the last stage of bitterness, there is no reliable evidence to prove that he seriously contemplated setting up a government in Virginia that should be entirely independent of England. Even the mere appearance of antagonizing the Mother Country, to which he was driven towards the end of the insurrection, caused nearly all those members of the higher class of planters who had at first sympathized with his aims, to fall away from his side. His enemies' assertion that his followers represented the "scum of the people" thus became substantially true, although many men of high and noble spirit, like Thomas Hansford, for instance, remained loyal to him and his cause until the last hour. The complete termination of the movement at his death showed that he alone was able to give it firmness and confidence at the extreme stage which it had then reached. It will always remain an open question whether his powerful influence could have held his ignorant troops together when confronted with such an unmistakable evidence of their being looked upon as

<sup>1</sup> Colonial Entry Book, 1675-81, p. 153.

rebels by the English Government as the arrival of English regu'ars sent to disperse them at the point of the bayonet.

Throughout the remainder of the century, expressions were in common use which disclose the unconscious loyalty of the Virginians. For instance, the county judges always designated themselves as "His Majesty's Justices." When, in 1686, William Browne, of Rappahannock, blurted out many "slighting and scurrilous" words to show his contempt for all forms of authority, his language and conduct were declared by the county court to be highly prejudicial to "His Majesty's peace," and the high sheriff was ordered, "in the name of His Majesty," to take the culprit into his custody.<sup>1</sup> Such was the ordinary formula in all court proceedings. Not infrequently an entry in the records respecting the course of some person who had been drowned or had committed suicide begins with the words: "His Majesty having lost a subject, a man this day being found dead."<sup>2</sup> Nor was this spirit confined to such documents. The political records reveal as vividly as the legal the loyalty of the Virginians; naturally, it was there couched in even warmer terms because so often these political records were papers addressed directly to the King, or to bodies, like the Privy Council, very closely associated with him.<sup>3</sup>

Very great care was taken by the authorities of the Colony that no rumors of a seditious character touching the monarchy should be permitted to circulate. Whoever happened to overhear even a whisper of that

<sup>1</sup> Rappahannock County Records, Orders May 5, 1686. These forms were also used in England.

<sup>2</sup> Henrico County Records, vol. 1677-92, orig. pp. 330, 334.

<sup>3</sup> British Colonial Papers, vol. 1v., Nos. 125, 156, I.

nature was ordered to report the fact to the nearest justice; and all persons known to have indulged in such a discourse were arrested and tried as guilty of a grave offence, not only against the peace of the community, but also against the sacred rights of the throne. When the first report of Monmouth's Rebellion reached Virginia, the ship-masters coming from England were warned against divulging any information which might produce a feeling of uneasiness and uncertainty in the Colony on account of the supposed unsettled state of affairs in the Mother Country. Full assurance of Monmouth's capture and the suppression of the uprising having arrived, a proclamation was issued directing the people to observe a day of Thanksgiving for so signal a blessing.<sup>1</sup> Nor was the loyal devotion to the King confined to the subservient Howard and his Council, whose interests were so closely wrapped up in James's retention of power as against such an upstart as his nephew; when, in 1688, news was brought that a Prince of Wales had been born, all the counties appear to have responded with voluntary and unaffected heartiness to the Governor's command that a day should be set apart for celebrating so auspicious an event. The justices of Rappahannock, for instance, gave at once an order to Captain George Taylor to convey to the northside court-house a large quantity of rum and other liquors, with a proportionate supply of sugar, for the use of the troops of horse, companies of foot, and other persons who should assemble on that occasion. Captain Samuel Bloomfield was to perform a like service in furnishing the spirits for quenching the thirst of those who should gather at the southside court-house at the same hour. It was estimated that

<sup>1</sup> Colonial Entry Book, 1680-95, pp. 219, 225.



the outlay entailed in liquors alone for this one county would reach ten thousand pounds of tobacco, a very great sum to expend in this manner even at that early day.<sup>1</sup> In Middlesex, Mr. Richard Robinson was allowed in the public levy about sixteen hundred pounds of tobacco for providing wine and cider for the celebration of the birth of the same unfortunate prince, who was hardly born before his brilliant prospects became permanently overclouded.<sup>2</sup>

There are indications, however, that many persons in Virginia, owing to their disapproval of the King's attitude towards the Church of England, had begun to turn their eyes towards the Prince of Orange some time before it was known that he had set out on his memorable expedition to dispossess James of his throne. For instance, in March, 1689, Henry Pike, while drinking at the table of Colonel John Custis the health of that Prince, exclaimed as he raised his cup: "God save the King." This caused such scandal and consternation that he seems to have been arrested on the spot.<sup>3</sup> Nevertheless, the culprit really reflected the rapidly changing sentiment of the people, who, as the ecclesiastical policy of James became more clearly understood by them, were increasingly disposed to weaken in their allegiance, so that when the order for proclaiming William and Mary King and Queen arrived, they responded as a body with alacrity. In Henrico county, the satisfaction over the change in the English Government seems to have been practically universal, and the event was celebrated at the county seat by the firing of guns, the beating of drums, the sounding of trumpets,

<sup>1</sup> Rappahannock County Records, 1686-92, orig. p. 141.

<sup>2</sup> Middlesex County Records, Orders Nov. 11, 1689.

<sup>3</sup> Northampton County Records, vol. 1683-89, p. 426.

and the loud and prolonged hurraing of the assembled multitude. The two monarchs had already been proclaimed at Jamestown, no doubt with ceremonies equal in stateliness and fervor to any previously occurring in the Colony's history.<sup>1</sup> Rappahannock, which, as we have seen, had, a short time before, hailed the birth of a Prince of Wales with so much enthusiasm, was now so devoted in its loyalty to the new King and Queen that the slightest expression in disapproval of their accession, or in criticism of their actions, was there punished with extraordinary severity. Roger Loveless, a citizen of this county, who had, on a public occasion, been so bold as to drink a health to King James and death to King William, was arrested, and by order of court condemned to receive at the whipping post twenty lashes laid on with all the force which the constable could use; and in addition was required to give satisfactory security for his good behavior.<sup>2</sup> Loveless, it is evident, occupied an humble place in the community, and in uttering the words with which he was charged was probably animated more by a spirit of bravado than by any real attachment to the cause of the deposed monarch.

<sup>1</sup> Henrico County Records, vol. 1688-97, p. 48, Va. St. Libr.

<sup>2</sup> Rappahannock County Records, vol. 1686-92, orig. p. 302.

## CHAPTER VI

### Territorial Divisions

AT the time when the Colony of Virginia was founded, the territorial divisions of England consisted of the Shire or County, the Hundred, and the Town or Tithing. The Town or Tithing was composed, as the name implied, of ten families; the Hundred of ten times ten; and the County of an indefinite number of hundreds.<sup>1</sup> It was only natural that, when the emigrants came to lay off territorial divisions in the new dominion oversea, the custom prevailing in the Mother Country should have been adopted as the one most familiar to all English subjects. In the beginning, before the settlements had spread out very much, the expectation was entertained that the Colony's population would be grouped together very thickly; indeed, it was not perceived until some years later that the peculiar demands of tobacco culture would lead to the dispersion of the inhabitants, and that the teeming communities of the Old World would, in consequence, find no counterpart in Virginia. There appears, however, to be no evidence that the term "town" or "tithing" was ever formally applied in the Colony to every ten families; on the other hand, the use of "hundred" as a term expressing a territorial division, and supposed in theory at least to embrace

<sup>1</sup> Blackstone's *Commentaries*, Book I., p. 113 et seq.



an hundred families, was introduced at a very early date. As the ground occupied by an hundred families in Virginia was far more extensive than the ground occupied by the same number of families in England, it is quite probable that the significance of the division from this, the personal, point of view was soon lost, and the Hundred came to be purely territorial, without regard to the number of its inhabitants, although the expectation was, no doubt, indulged that, should that number when the Hundred was created fall short of twice fifty families, time would supply the deficiency.

In Virginia at first as in England, the Hundred was the unit for judicial, military, and political purposes alike. Perhaps the first suggestion of the Hundred as a military division occurred when Captain Francis West and Captain John Martin were ordered to lead each one hundred men, the one to the Falls, the other to Nansemond, there to make settlements.<sup>1</sup> The next Hundreds to be laid off were established partly also for military purposes; this occurred in 1611, when Dale, having seized a wide area of country near the mouth of the Appomattox River belonging to the Appomattox Indians and composed of champaign and woodland, divided the whole tract, after he had given it the general name of New Bermudas, into several Hundreds known as the Upper and Nether, Rochdale, Digges, and West and Shirley.<sup>2</sup> The Nether Hundred seems to have been incorporated under a formal charter, by the terms of which its citizens were for a time required to perform certain duties and tasks, but were afterwards

<sup>1</sup> See *Works of Captain John Smith*, Arber's and Richmond editions.

<sup>2</sup> *Works of Captain John Smith*, vol. ii., p. 12, Richmond edition; Hamor's *Discourse*, p. 31.

to enjoy their full freedom. Previous, however, to acquiring it, they seem to have occupied a more advantageous position than most of the colonists; for instance, they were legally bound to work during only thirty days for the benefit of the common magazine; they were also impowered to refuse to obey all calls for their services made during the time they were employed in sowing their seed or reaping their harvests; nor were they under obligation to contribute more than two and a half barrels of corn to the public store; nor could they be ordered by the Governor, or any other official, however high his position, to give up their agricultural pursuits, and follow any special trade to which they had been trained in England,—a privilege of great moment in a colony where artisans were so few in number that there was a constant disposition on the part of persons in authority to force them to devote themselves exclusively to meeting the crying mechanical needs of the community. Even Argoll, a Governor who seems to have been only too arbitrary and unscrupulous in spirit, was disinclined to trample on the rights possessed by the inhabitants of this Hundred, but this may have been because he was enrolled among its citizens himself; when the inhabitants of the Bermuda Hundreds protested against the order he had given to Captain Madison to clear West and Shirley Hundred of wood, he acknowledged as just the claim to its ownership put forward by them; and assured them that, as belonging to the Bermuda Hundreds himself, he would not knowingly or willingly infringe on their privileges.<sup>1</sup>

<sup>1</sup> See for details about the Bermuda Hundreds, Rolfe's "Relation" in *Va. Hist. Register*, vol. iii., No. 1, p. 109; *Works of Captain John Smith*, vol. ii., p. 12, Richmond edition; Randolph MS., vol. iii., pp. 140, 142.

Perhaps the most important use made of the term "Hundred" in the early history of Virginia occurred in connection with the numerous associations establishing large communities of new settlers at various places in its territory. Most of these associations or societies, although of a private character, were deeply interested in the success of the general enterprise, and sought to advance its prosperity by increasing the population at their own expense; each seems to have sent over a considerable number of persons, who were seated within the bounds of a tract previously patented; this tract at once acquired the name of "Hundred"; and as such continued to be designated for many years after the association or society originally owning it had been dissolved. One of the earliest of the tracts to be thus taken up was Southampton Hundred. This Hundred, known at first as Smythe's Hundred, in honor of Sir Thomas Smythe, spread over as wide an area of ground as eighty thousand acres. Among other Hundreds of the same character were Stanley's and Lawne's. Christopher Lawne, in 1619, transported to the Colony one hundred settlers, whom he established at Warrosquoik. Berkeley's Hundred seems to have been founded in a similar manner. The only Hundred of any kind laid off on the Eastern Shore was St. George's, which, like Fleur de Hundred and the Bermuda, continued to be a purely local designation long after its territorial and personal significance had passed away.<sup>1</sup>

<sup>1</sup> Northampton County Records, Orders July 28, 1645. In February, 1619-20, the Quarter Court in England passed an order that all the leaders or captains of particular plantations who had gone thither to establish themselves, their tenants, and servants there, should enjoy the right, "until a form of government be there settled, to associate unto them the discretest of their companions to make ordinances and constitutions for the better directing of



The Hundred, during the first years of the Colony's history, was also used as a unit for judicial purposes. There was passed, in 1624, an Act providing that courts should be established in Charles City and Elizabeth City. The county had not yet been created, and "city" was a term to a certain extent convertible with "Hundred." These courts, as has been pointed out already, were conducted by the commander of the district associated with a certain number of commissioners nominated by the Governor.

The words "hundred," "city," and "plantation" seem to have been included in the term "borough" for political purposes. Under the system prevailing at this time in England, the citizens of each borough who owned property, paid taxes, and could cast a vote, were known as Burgesses. As the first Assembly to meet in Virginia was composed of men representing the boroughs into which, as we shall see, the Colony was now laid off, they were designated as Burgesses, a name the members of the House continued to bear throughout the colonial period.

When the first General Assembly came together in 1619, the Colony was already divided into four great corporations, known respectively by the names of James City, Charles City, Henrico, and Kikotan. The country belonging to James City extended on both sides of the river and embraced within its limits almost the same area of ground as now makes up the counties of Warwick, James City, Isle of Wight, and Surry. Charles City hugged the line of James River from the modern Jones' Neck to the mouth of the Chickahominy.

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their servants and business, but these regulations must not be contrary to the laws of England"; see Minutes of Quarter Court for Febr'y 2, 1619, Neill's *Va. Co. of London*, p. 129.

Henrico began at Farrar's Island, the whole of which it took in, and from thence spread on both sides of the stream westward. Finally, Kikotan embraced the reach of country situated between the southern boundary of James City and the Bay. The Eastern Shore, at first known as the "Kingdom of Accawmacke," does not seem to have belonged to any one of these four great corporations.<sup>1</sup>

It was originally intended that each corporation should possess a capital town of its own; this for Kikotan was to be Elizabeth City; for James City, Jamestown; for Charles City, City Point; and for Henrico, Henricopolis.<sup>2</sup> Jamestown alone grew to be a place of importance, not from the size of its population, but from the fact that, throughout the Seventeenth century, it was the seat of the Colony's general administration. Each of the four corporations was divided into boroughs according to the number of its inhabitants. Henrico and Kikotan, not being so thickly settled, were respectively laid off into one borough; James City, on the other hand, was divided into four boroughs; and Charles City into five.<sup>3</sup> Each borough represented the incorporation into one of all the towns, hundreds, and plantations situated within its boundaries. The entire number of boroughs were governed by the same laws and regulations.

Situated in the midst of these boroughs was a large tract of land which Captain John Martin had acquired under a patent allowing him within its boundaries certain special privileges and exemptions.<sup>4</sup> He even

<sup>1</sup> Brown's *First Republic*, p. 313.

<sup>2</sup> Tyler's *Cradle of the Republic*, p. 115.

<sup>3</sup> Brown's *First Republic*, p. 313.

<sup>4</sup> For several years, Martin had held an important command,

went so far as to assert that, by the terms of his patent, the inhabitants of this tract were not subject to the orders and regulations which the Company, in 1618, had instructed Governor Yeardley to enforce, with perfect equality and uniformity, throughout the Colony; and that they were not even required to submit to any Acts which the General Assembly itself might see fit to pass. The clause quoted by him in support of this extraordinary claim declared that "it should be lawful for Captain Martin to govern and command all such persons as he should carry over with him, or should be sent him hereafter, free from any command of the Colony, except it be in aiding same against any enemy." When the first Assembly convened, the Burgesses chosen from Martin's Hundred, as the grant was known, were not suffered to take their seats, on the ground that this Hundred had no right to elect separate representatives. Martin protested, but the Company declined to sustain him when he appealed to it in England. That body seems even to have taken away his patent; but promised to restore it on condition that he should abandon his claim to special privileges; and to this, after a long and bitter struggle, he was compelled to yield. It would appear that he had given much umbrage by making the territory embraced in his grant a refuge for persons hopelessly in debt, and by declining to permit their arrest; and the same right of asylum was also extended to other persons of evil

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when, in 1616, he received, as a reward for his services, ten shares of land. It was owing to the King that his patent to this land was accompanied by such extraordinary privileges. Argoll protested against the conference of these privileges, but fear of offending James seems to have prevented any step from being taken at this time to deprive Martin of them; see *Va. Maga. of Hist. and Biog.*, vol. vii., pp. 268-74.



reputation. The officers who had come to take them into custody were threatened, should they refuse to leave, with the alternative of lying neck and heels in the place of public punishment.<sup>1</sup>

In 1634, the Colony was laid off into eight large shires. This was the final step in the plan which Dale had in mind, in 1611, when he established the Bermuda Hundreds, and the Company, in 1618, when they divided the four great corporations into boroughs. With the erection of the shire or county, Virginia's resemblance to the Mother Country in its territorial designations was completed,—only that the Hundred had become wholly nominal, owing to the wide dispersion of the population under the influence of the plantation system. When provision was made for the creation of the shires, it was distinctly stated that they were to be governed after the manner followed in England during so many centuries; there was to be a Lieutenant or Commander of each shire as in the Mother County, and he was to be appointed just as he was there; each shire was also to have its own sheriff, to be nominated in the like way; and each was also, by the same Act, impowered to have its own sergeant and bailiff. The names bestowed on the new shires were James City, Charles City, Elizabeth City, Henrico, Warwick River, Warrosquoick, Charles River, and Accomac.<sup>2</sup> Each was divided into parishes, precincts or boroughs for the constables, and precincts or walks for the surveyors of the highways. It is evident from this that neither the Hundred nor the Town or Tithing,

<sup>1</sup> British Colonial Papers, vol. iii., No. 36 I; see also Colonial Records of Va., State Senate Doct. Extra, 1874, p. 18.

<sup>2</sup> Henning's *Statutes*, vol. i., p. 224; Randolph MS., vol. iii., pp. 235-6.

which were among the oldest of all the English territorial divisions, was recognized when the Colony was thus laid off; and the reason given was that such minor divisions were only called for in a thickly settled country.<sup>1</sup> The division into shires or counties, parishes, and precincts, was kept up throughout the remaining years of the century.<sup>2</sup>

At first, in laying off a new county, the chief consideration was to bring all its extremities as near as possible to one common centre. On the other hand, the chief consideration at a later period seems to have been to restrict the area of the proposed county to the valley of one great river, which would furnish to all the new county's citizens convenient means of shipping, without their having to turn to any other great stream situated in an entirely different county.<sup>3</sup> From a trading point of view, each county was thus made practically independent of its neighbors.

By whom were new counties formed? As early as 1655, the General Assembly is found giving an order to three commissioners of Nansemond and Isle of Wight respectively to come together for the purpose of agreeing finally upon the boundaries of those two counties, about which there seems to have been a serious dispute; and they were directed to report their conclusions to the next Assembly.<sup>4</sup> In 1669, when the question of dividing Lower Norfolk was under advisement, the same body, having first decided to refer the

<sup>1</sup> See letter of Thomas Ludwell to Arlington in 1666, British Colonial Papers, vol. xx., Ncs. 125, 125 I.

<sup>2</sup> Beverley's *History of Virginia*, p. 192.

<sup>3</sup> *Ibid.*

<sup>4</sup> Hening's *Statutes*, vol. i., p. 405. Hening, in a note, states that, previous to 1644-5, the power of forming counties was vested in the Governor and Council; see Hening's *Statutes*, p. 294.

matter to the vote of the inhabitants for determination, instructed the justices to appoint a date for them to meet, and also to select a convenient place,—both the date and the polling place to be announced at least two Sundays beforehand from the pulpit of every church and chapel-of-ease situated in the county.<sup>1</sup>

It would appear, from this instance, that, whenever it was proposed that an old county should be laid off into two new counties, the General Assembly, which really possessed the power of making the division without consulting the inhabitants, nevertheless was in the habit of leaving the question to their suffrages as the persons whose welfare was most deeply involved. If, on the other hand, the new county was one which had to be carved out of an area of country lying towards the frontier, and only recently settled, then there is no reason to think that this body deemed it necessary to find out its people's wishes as to whether a new county should be formed or not; the only point to be determined here was as to whether this area was occupied by a sufficient population to bear the expenses certain to arise after the county was organized. The task of defining the exact limits of a new county established on the frontier was, no doubt, performed by specially chosen commissioners, the course followed, as we have seen, whenever an old county was divided in consequence of the increase in the number of its inhabitants; but, in each instance, the commissioners' reports had to be approved by the General Assembly before they could be accepted as legally conclusive.

Every county situated on the western frontier was regarded as having an indefinite extension into the unknown forests stretching apparently without a limit

<sup>1</sup> Lower Norfolk County Records, vol. 1666-75, p. 77<sup>2</sup>.



towards the setting sun. In the beginning, such counties as Stafford, New Kent, and Henrico had no western boundaries; and both Stafford and Henrico continued to have none even down to the close of the Seventeenth century. This was the case with Norfolk county also after Lower Norfolk had been divided into the counties of Norfolk and Princess Anne. Whilst the counties lying in the heart of the Colony never covered a very broad area, the process of subdivision went steadily on almost from the year when the eight original shires were created. The progress of this subdivision among the old counties was, in fact, far more rapid than the progress of the creation of new counties on the frontier; indeed, it was not until many years had passed after the opening of the Eighteenth century that the line of original counties reached the foot-hills of the Blue Ridge, although, as the crow flies, from the great falls in the James and Rappahannock, the distance hardly exceeds a journey of two days by horseback. The comparative slowness with which counties were formed to the west of these great falls is attributable to the absence in those parts at that date of all means of transporting crops. The planters throughout the Seventeenth century were dependent upon the streams for the removal of their tobacco, and when the settlements had reached the falls, the disposition of the growing population then was rather to spread over the vacant spaces in the existing counties accessible to the chief rivers than to push forward into a country without navigable arteries communicating with the Colony's markets. There is perhaps no more remarkable illustration of the part which the great rivers played in Virginia's development during this century than the fact that, from the foundation of

Henricopolis on Farrar's Island in 1611 until the close of 1700, the country west of the falls in the James, where the modern city of Richmond stands, was known as the World's End. Here the navigable waters stopped, and apparently no serious attempt was made to settle the waste of woodland beyond until the Huguenots' arrival at the end of the century. It was as if that wide reach of forest lying between the mountains and the points in the great streams reached by the pulse of the ocean tides was haunted by dragons resentful of all intrusion into those dim and silent shades where they had dwelt immemorially. When Spotswood and his light-hearted companions in the following century set out on their adventurous expedition towards the Blue Ridge, they looked upon themselves very properly as about to explore a land trodden only by bands of savages, herds of buffalo, and prowling wolves, bears, and panthers, although, for an hundred years or more, Englishmen had been living almost in sight of the highest peaks of the chain. Such was the influence of the country's configuration upon the spread of its population! Such the impression of the great rivers upon its economic development!

One of the most conspicuous evidences of the Virginians' loyalty to the throne and the Mother Country during the Seventeenth century is found in the names then given to the different counties. Of the eight original shires, only two bore names drawn from Indian sources, and in time both of these were dropped, although "Accomac" was readopted when Northampton was laid off into two counties. James City and Charles City were named in honor of James I and Charles I, Elizabeth City of Princess Elizabeth, and Henrico of Prince Henry, her brother. At a later date,

York, Lower and Upper Norfolk, Isle of Wight, New Kent, Westmoreland, Northumberland, Middlesex, Gloucester, Surry, Lancaster, Stafford, and Essex, all reflected in their names an affectionate recollection of the great territorial divisions of England in which so large a proportion of the Colony's inhabitants had first drawn breath, and is an additional proof of the eagerness of the Virginians of these early times to identify their new homes as far as possible with the old oversea. When Lower Norfolk county was divided, the General Assembly conferred on the new county the name "Princess Anne" in honor of the heiress to the English throne. Nansemond and Rappahannock alone of Indian names were, as designations of counties, retained for many years following the time they were given; and this was due chiefly to the fact that these counties were named after the streams on which they were situated. Had there been any disposition to adopt an Indian name independently of a purely local influence, it is probable that Pocahontas would have been chosen, as that princess had many descendants in the Colony.



## CHAPTER VII

### The Governor: His Appointment

THE foremost officer of the Colony was the Governor. How was he appointed? In the general instructions drawn up in 1606 by the King, it was provided that the President of the Council—who, under the first charter, performed all the duties of chief executive—should be chosen from among the members of that body by a majority of their votes; and the only restriction placed upon their freedom of selection was that they should not advance a clergyman to the position. The first political act recorded in the history of Virginia was the administration of the oaths to the Councillors, and the second, the promotion of Edward Maria Wingfield to the Presidency.<sup>1</sup> No President could succeed himself immediately, but could be re-elected after the intermission of one term. This regulation was sometimes evaded by means of an open subterfuge; for instance, when Captain John Smith's first term expired, Captain Martin was chosen in his place, but on his resigning at the end of three hours' incumbency, Smith was again elected.<sup>2</sup>

It was not until 1609,—the second charter having in the meanwhile been granted,—that the head of the political administration in Virginia ceased to be spoken

<sup>1</sup> Brown's *First Republic*, p. 27.

<sup>2</sup> *Works of Captain John Smith*, vol. i., p. 236, Richmond edition.

of as President; he then came to be known as Governor, —a name retained throughout the remaining years of colonial history. The choice of the executive was now the exclusive right of the London Company. The first person elected to the office by that corporation was Lord De la Warr, who was associated with Sir Thomas Gates as Lieut.-Governor, Sir George Summers as Admiral, and Captain Newport as Vice-Admiral. Gates's arrival at Jamestown preceded De la Warr's in time, and as De la Warr's deputy, he was the first man to perform the duties of the Governorship in Virginia under that specific designation, although, as we have seen, Wingfield and his immediate successors had performed the same duties under the name of President.

By the provisions of the Ordinances and Constitutions of 1619 and 1620, the Governor and Lieut.-Governor were always to be nominated and appointed by the members of the Company assembled in a quarter court.<sup>1</sup> When the Company's charter was revoked in 1624, the right to choose these officers reverted to the King. The bestowal of the Governorship now became so dependent upon personal favor that petitions to the throne for the purpose of securing it were not unknown; such was the manner in which Henry Woodhouse, muster-master of Suffolk, sought to obtain it in 1634, although, at this time, Harvey was occupying the position. The latter's term, however, was now drawing to a close. The King retained the right of appointment until the overthrow of the Monarchy. In the agreement between the Commissioners of Parliament and the General Assembly in March, 1651-2, it was expressly declared

<sup>1</sup> Ordinances and Constitutions, 1619, 1620, p. 19, Force's *Hist. Tracts*, vol. iii.

<sup>2</sup> British Colonial Papers, vol. viii., No. 24.

that the "former government by commission and instructions was null and void." During the period of the Commonwealth, the Governor was chosen by the voice of the House of Burgesses, which, on one occasion, took the shape of a mere resolution; on another, of a formal Act.<sup>1</sup> This power was derived from the terms obtained at the time of the surrender<sup>2</sup>; but it does not appear to have gone entirely unquestioned, for, in 1657, the English Council of State requested Cromwell to send out to Virginia, to serve as its Governor, whatever person seemed to him to be best fitted to fill the office. At this time, the Colony was in an unsettled condition, and the Council believed that this was the only sure means of allaying the prevailing distractions.<sup>3</sup> In such an emergency, the agreement between the Commissioners of Parliament and the inhabitants adopted some years before, was not likely to be treated by the English Government with strict respect.

As soon as news reached Virginia that the Commonwealth was at an end, Sir William Berkeley, as already stated, with great energy and promptness resumed the office of Governor, apparently at the moment under the authority of his original commission, which in theory had remained unrevoked by anything occurring during the period of the usurpation in England. This decisive step on his part was soon confirmed by the action of the General Assembly; and it was not many months before he was formally reappointed by royal commission.<sup>4</sup> From this time until the close of the century, each

<sup>1</sup> Henning's *Statutes*, vol. i., pp. 358, 516, 517, 529.

<sup>2</sup> *Ibid.*, p. 431.

<sup>3</sup> *Interregnum Entry Book*, vol. cvi., p. 358.

<sup>4</sup> See Warrant to Attorney-General, *British Colonial Papers*, vol. xiv., 1660.



Governor in succession owed his nomination to the King's favor alone, and popular influence in the Colony had no longer, as during the interval of the Protectorate, any weight in his selection. The precedent established during that interval ceased to have any legal importance; and the Governor, having become again the foremost representative of the Crown, as such occupied a position entirely independent of the Assembly from a political point of view.

There were three ways in which a vacancy in the office of Governor could be brought about:—first, by his voluntary resignation; secondly, by his forcible removal; and, thirdly, by his death. The only instance of voluntary resignation recorded was that of Captain Martin, who, as already stated, remained President only three hours. During the period when the Colony's affairs were administered under the provisions of the charter of 1606, the earliest to be granted, the Council was impowered to displace, by the vote of a majority of its members, the Governor should there be just ground for taking such summary action against him. As we have seen, both Wingfield and Ratcliffe were deposed under the authority of this law.<sup>1</sup> In September, 1607, Wingfield was summoned to appear before the new President and Council, and not until then were the reasons for his removal disclosed to him. A formal indictment embodying all the accusations against him having been read in his hearing by the Recorder, Gabriel Archer, he demanded a copy of this document and sufficient time in which to reply to its various charges; but neither request was complied with. When asked to whom would he appeal, he

<sup>1</sup> Brown's *First Republic*, p. 27; *Works of Captain John Smith*, vol. i., p. 192, Richmond edition.

answered, "To the King," on whose mercy he threw himself; he was then committed as a prisoner to the pinnace lying in the river at Jamestown; and was only allowed to go on shore on Sunday at the hour of religious services.<sup>1</sup>

Argoll, aware of the anger felt by the Company towards himself on account of his arbitrary conduct, and expecting the early arrival of Yeardley, appointed as his successor, took ship and stole away from the Colony. Harvey was removed by the vote of his own Council; but as this action was deemed seditious by the English Government, he was reinstated in office. Berkeley was displaced by the surrender to Parliament, and was only restored to his old position after the fall of the Commonwealth. Culpeper, for returning to England without leave, was threatened with forcible removal from the Governorship unless he went back to Virginia and resumed the performance of its duties; and this he had the discretion to do.

Both before and after the revocation of the London Company's letters-patent, special provision was made for filling a vacancy in the Governorship caused by the death of the incumbent. As early as 1621, Wyatt received instructions to empower the members of his Council to choose a successor to himself within fourteen days after his decease, should he die in office. If the number of votes cast for each of two opposing candidates was equal, then the Lieut.-Governor was to take the place of the late Governor; and if there was no Lieut.-Governor, then the Marshal; and if there was also no Marshal, then the Treasurer.<sup>2</sup> Whoever assumed the

<sup>1</sup> See Wingfield's *Discourse of Virginia* in Arber's edition of the *Works of Captain John Smith*.

<sup>2</sup> Instructions to Wyatt, 1621, Randolph MS., vol. iii., p. 163.

position under these circumstances was to hold it only until the Company or the Crown, whichever at the time was in control, should make a permanent appointment. When, in 1627, Yeardley died, the Council met the day after that event, and by a majority of voices selected Francis West to fill the vacancy. The new Governor at once wrote to the English authorities to inform them of his accession.<sup>1</sup> It appears that, in a letter addressed to the Commissioners nominated to settle the affairs of Virginia, Charles I had designated Harvey as Yeardley's successor in case of the latter's death; and it was only in the contingency that the former also should die that the Council were to possess the right to choose a new Governor. As they proceeded so quickly to supply the vacancy, it is to be inferred that Harvey was not at the time residing in the Colony.<sup>2</sup> When he himself was deposed, the Councillors, on examining his commission, found that they were impowered by its terms to name his successor, should the necessity of filling the position arise. Quietly waiting until they knew positively that the ship transporting him to England had passed out of the Capes, the Councillors then proceeded to nominate John West, who, from Point Comfort, where he had probably been watching the departing vessel, informed the Commissioners of Plantations of his promotion.<sup>3</sup> When Harvey returned to the Colony, the new commission which he brought with him conferred on his Council a like power of election in case of his death during his term of office; and the same power was

<sup>1</sup> See letter dated Dec. 20, 1627, British Colonial Papers, vol. iv., No. 34.

<sup>2</sup> Randolph MS., vol. iii., p. 195.

<sup>3</sup> See West's Letter in British Colonial Papers, vol. ix., No. 7.



repeated in the instructions given to Wyatt some years afterwards.<sup>1</sup>

The succession to the Governorship in case the incumbent either resigned, was removed, or died, was fixed by royal instructions in 1679 as follows:—first, the Lieut.-Governor, and in this provision the Deputy-Governor was, no doubt, included; secondly, the Secretary of the Colony; and thirdly, the Major-General in command of all the military forces.<sup>2</sup> This regulation seems to have been occasionally extended by the terms of a particular commission; that of Howard, for instance, prescribed that, in case he died while in office, at a time when there was no one at hand authorized under the general rule to assume the position, its duties should be performed by the Council acting as one body.<sup>3</sup> As we will soon see, this in practice signified that the President of the Council, or its oldest member, was to undertake these duties, with the assistance of at least five of his associates.<sup>4</sup>

Should there be a Lieut.-Governor residing in the Colony at the time when the Governor was compelled to be absent from Virginia temporarily, he at once assumed all the powers and duties of the place. In some cases, he filled the position from the beginning to the end of the Governor's term simply because the Governor himself, being unwilling to leave England, had obtained permission to transfer the office on condition of his sharing the salary and other emoluments with the actual incumbent. In January, 1689—

<sup>1</sup> Patent Roll 12 Car. I., Part 21, No. I.; British Colonial Entry Book, 1606-62, p. 216.

<sup>2</sup> Colonial Entry Book, 1672-81, p. 365.

<sup>3</sup> *Ibid.*, 1685-90, p. 19.

<sup>4</sup> Beverley's *History of Virginia*, p. 187

90, Nicholson, who had been appointed Lieut.-Governor under Howard, received Howard's commission and instructions for his guidance in as formal a manner as if he himself had been nominated to the Governorship in the first instance.<sup>1</sup>

In the absence of a Lieut.-Governor, it seems to have been sometimes in the power of a Governor, on the point of leaving the Colony temporarily, to choose his own deputy. When Dale was about to set out for England in 1616, he nominated George Yeardley to fill his place while he was away<sup>2</sup>; and his authority for doing this was apparently derived from the original commission granted to De la Warr.<sup>3</sup> Half a century later, Berkeley on the eve of his departure from Jamestown for London selected, with the approval of his Council, Francis Morryson to act as his substitute during the interval which must pass before his return.<sup>4</sup> When, in the course of 1673-4, he was again absent, Sir Henry Chichely, the Deputy-Governor, performed the duties of the Governorship, not at Berkeley's, but at the royal instance.<sup>5</sup> A few years afterwards, Charles II, by special proclamation, gave directions that the Governor, should he be called away from Jamestown for any length of time, was, with the Council's consent, to be empowered to choose a deputy unless that officer had already been named by the King in anticipation of the Governor's temporary withdrawal.<sup>6</sup>

In the absence of both the Lieut.-Governor and the Deputy-Governor, the Governor seems to have

<sup>1</sup> Orders of Council, Feb. 20, 1690, Colonial Entry Book, 1680-95.

<sup>2</sup> *Works of Captain John Smith*, vol. ii., p. 26, Richmond edition.

<sup>3</sup> Brown's *Genesis of the United States*, vol. i., p. 380.

<sup>4</sup> Robinson Transcripts, pp. 176, 244.

<sup>5</sup> Randolph MS., vol. iii., p. 317.

<sup>6</sup> Surry County Records, vol. 1671-74, p. 205, Va. St. Libr.

possessed the power, whenever he intended to remain away from Jamestown only for a comparatively short time, to confer upon the President and the Council the authority to execute all the duties incident to his office. This was done by Wyatt as early as 1623, when he set out for the Bay to enter into trade with the Indians<sup>1</sup>; and his example was imitated many decades later by Culpeper on his departure for England; but not, however, without his offering some justification for taking the step: "I leave the Colony," he declared, "not in the hands of an easy Lieut.-Governor, but of a prudent, able, and vigorous Council, for the conduct of almost every individual member whereof I dare to be responsible."<sup>2</sup> Doubtless, this encomium was deserved, but the real explanation of Culpeper's action was that he wished to avoid that division of his emoluments which would have followed the appointment of a Lieut.-Governor. An order had been given by the Privy Council in 1682, to the effect that, during the absence of the Governor, one half of his salary and all his perquisites should be paid to the Lieutenant or Deputy-Governor nominated to fill his place<sup>3</sup>; if, on the other hand, that place was taken by the President of the Council, a deduction of only five hundred pounds seems to have been made.<sup>4</sup> In 1684, Howard, then intending to set out for New York with a

<sup>1</sup> Randolph MS., vol. iii., p. 173.

<sup>2</sup> Report 1683, Colonial Entry Book, 1681-5, p. 169; see also British Colonial Papers, vol. ii., p. 112.

<sup>3</sup> Colonial Entry Book, 1681-5, p. 93; see also Instructions to Andros, B. T. Va., 1691-2; Entry Book, vol. xxxvi., p. 126. When Nicholson, Lieut.-Governor under Howard, served as Acting-Governor, he was paid one thousand pounds sterling, one half of Howard's salary. His regular salary, should Howard come over to Virginia, was not to exceed three hundred pounds sterling.

<sup>4</sup> Beverley's *History of Va.*, p. 188.



view to negotiating a treaty with the Northern Indians, issued a proclamation, after Culpeper's example under the like circumstances, in which he announced that all the powers of his commission were, after his departure, to be exercised by the Council, the names of whose members he mentioned in succession, without, however, stating which one was to possess the chief authority, although this, no doubt, by the force of custom, fell to the senior.<sup>1</sup> Howard was certainly as much influenced by the spirit of economy as his predecessor in directing the Councillors to serve in his place, but he was specially impowered to do this by the terms of his commission. During the time these duties were executed by them, all proclamations issued ran in the President's name.<sup>2</sup> When, in 1693, Andros was about to visit Maryland, he published a proclamation in which he nominated Ralph Wormeley to fill the office of President of the Council while he himself should be away, and as such Wormeley seems to have, in Andros's absence, performed all the duties incident to the Governorship.<sup>3</sup>

<sup>1</sup> See Proclamation in Surry County Records, vol. 1684-86, p. 13, Va. St. Libr.; see also Colonial Entry Book, 1680-95, p. 203.

<sup>2</sup> See, for instance, Proclamation entered in Henrico County Records, vol. 1688-97, p. 94, Va. St. Libr. Nathaniel Bacon, Sr., whilst serving as President in the absence of the Governor, appointed not only the sheriffs, but also the Secretary of the Colony; see same Records and volume, p. 121; also Northampton County Records, vol. 1689-98, p. 44.

<sup>3</sup> Colonial Entry Book, 1680-95, Proclamation dated 1693.

## CHAPTER VIII

### The Governor: Length of Term

DURING the operation of the charter of 1606, the President or Governor was supposed to remain in office only one year, although, after an intermission, he was capable of re-election.<sup>1</sup> As we have seen, this provision of the royal instructions was quietly evaded in Smith's favor by a subterfuge amply justified by the success of his administration. When control of the Colony's affairs passed, under the charter of 1609, to the London Company, this body raised Lord De la Warr to the office of Governor for life.<sup>2</sup> The ordinances of 1619 and 1620, however, required that the Governor's tenure should not last longer than six years; three, indeed, constituted the regular term; but it could be extended to six, should such be the Company's pleasure.<sup>3</sup> The General Assembly, writing to the Privy Council in 1623, protested against the limitation of the term to three years,—the period adopted in actual practice,—on the ground that, during the first year, this officer was almost invariably disabled more or less by the sickness incidental to his "seasoning"; and that during his third, he was making preparations for

<sup>1</sup> Brown's *Genesis of the United States*, vol. i., p. 66.

<sup>2</sup> *Ibid.*, p. 378.

<sup>3</sup> Orders and Constitutions, 1619, 1620, p. 19, Force's *Historical Tracts*, vol. iii.

his departure for England, and, in consequence, was not disposed to give the strictest attention to the performance of his duties.<sup>1</sup> Writing again in February, 1624-5, just after they had received through Pory, one of the Commissioners for the settlement of the affairs of Virginia, full information as to the change in the form of government following upon the revocation of the Company's letters-patent, the same body reiterated their objection to so short a term as three years; during the first year, they again declared, the Governor was necessarily devoid of all experience for the proper execution of his powers; during the second, he was still acquiring this experience; and during the third, his thoughts were too much bent upon his approaching withdrawal to be directed strenuously towards the performance of all the functions of his office. It is probable that these repeated remonstrances produced an impression, for, in the course of the next year, the King issued an order that the Governor's commission should remain in force until its recall had been signified under the royal seal.<sup>2</sup> This regulation continued in operation apparently until the Colony passed under the control of Parliament.

During the Protectorate, the Governor was chosen for brief terms alone: for instance, in 1657-8, this officer was elected by the House of Burgesses for a period to end with the convening of the next General Assembly, unless, in the interval, the English Council of State should send over different instructions.<sup>3</sup> After the Restoration, as soon as Berkeley resumed his old position, the former regulation was readopted, and he

<sup>1</sup> Randolph MS., vol. iii., p. 177.

<sup>2</sup> Robinson Transcripts, p. 44.

<sup>3</sup> Hening's *Statutes*, vol. i., pp. 358, 431.



remained in office until his successor had received his commission; his power continued during fifteen years; and he would not then have lost his hold but for his violent course after the collapse of the rebellion. Culpeper was appointed to the Governorship for life; but returning to England without first obtaining leave, was, on his arrival, arrested; and having been tried for taking presents from the Assembly, was deprived of his extraordinary tenure.<sup>1</sup> None of the persons filling the position after him was nominated for such an indefinite period; henceforth there continued in operation the former regulation under which the Governor remained in office until his commissioned successor reached the Colony.

In what manner was the Governor inaugurated? The first formal ceremony of this kind perhaps taking place in Virginia was that attending Gates's temporary assumption of power as De la Warr's representative. This occurred in 1609. On his arrival at Jamestown, having caused the people to assemble in the church to the sound of the bell, he ordered his credentials to be read aloud; and this having been done, Percy, the President of the Council under the original charter just expired, stepping forward, delivered into his hands the old royal commissions, the official copy of the royal charter of 1606, and the seal of the King's Council resident in Virginia.<sup>2</sup> When Yeardley came to Virginia in 1619, and proclaimed the memorable Instructions which he had received from the Company, it is quite probable that the beginning of the new epoch was celebrated with an extraordinary flourish, but no actual

<sup>1</sup> Chalmers's *Annals*, p. 345; Campbell's *History of Va.*, p. 336. Culpeper remained Governor on the ordinary footing.

<sup>2</sup> Brown's *English Politics in Early Va. History*, p. 16 *et seq.*

record of the fact remains; and it is also probable that the same course was pursued when he reached Jamestown as the Crown's first permanent representative after the revocation, in 1624, of the Company's letters-patent. On Harvey's return to Virginia in January, 1636-7, he landed at Point Comfort, and at once dispatched a summons to every member of his new Council; on their assembling in the church at Elizabeth City, he read to them the full text of his new commission and instructions; and followed this up by the publication of a full pardon to nearly all those who had taken an active part in his previous deposition.<sup>1</sup>

When Culpeper arrived at Jamestown, his first official act was to give orders that his commission should be proclaimed in the State-House; his second, was to take the oaths of allegiance and supremacy, and as chief magistrate of the Colony; his third, to administer the oaths of allegiance and supremacy to each member of his Council.<sup>2</sup> As Howard's representative many years afterwards, Nicholson's first official step was to read his commission privately in the presence of the Councillors; he then, in the company of that body, headed by their President, proceeded to the State-House, where his commission was publicly read and proclaimed; and this ceremony having been concluded, he took the several oaths required of him as the Acting-Governor of Virginia.<sup>3</sup> The like ceremony was followed by Andros in 1692 when he assumed the same office.<sup>4</sup> He arrived in James River in the month of September; when Nichol-

<sup>1</sup> See Harvey's Letter dated January 27, 1636-7, *British Colonial Papers*, vol. ix., 1636-8, No. 38 I.

<sup>2</sup> *British Colonial Papers*, vol. xlvii., No. 105.

<sup>3</sup> *Colonial Entry Book*, 1680-95, p. 349.

<sup>4</sup> *B. T. Va.*, 1692, No. 128.

son, who seems to have been stopping at Point Comfort or Elizabeth City at the time, was informed of his approach, he set out at once for the landing; and as soon as the new Governor disembarked, welcomed him in person. In the meanwhile, Nicholson had given a general order to the local militia to hold themselves in readiness to accompany Andros to Jamestown as a military escort. During the course of the latter's journey thither, several members of the Council came to join his cavalcade, and he was formally received by the whole body on his arrival at the Capital.<sup>1</sup> Nicholson having been appointed full Governor of Virginia near the close of the century, his commission, so soon as he reached Jamestown, was read by Bartholomew Fowler, the Attorney-General, in the great hall of the Sherwood residence, at this time used as a State-House owing to that building's recent destruction by fire. This commission having been proclaimed, there was read a second commission, in this case from the English High Court of Chancery, empowering Philip Ludwell and several others to administer the customary oaths, together with the Test oath, to the new incumbent. Nicholson, having first read aloud that part of his instructions containing the full list of the new Councillors, took the oath relating to the prevention of frauds and the regulation of abuses in the Plantation Trade; he next read his commission to serve as the Vice-Admiral of Virginia, and followed this up by taking the Test oath; then, together with the members of his Council, he subscribed to the articles of association formulated by Parliament for assuring the safety of the King's person, and the security of the royal government. All this having been concluded, Nicholson signed a proclamation authorizing

<sup>1</sup> B. T. Va., 1692, No. 133.



the persons at that time filling the civil and military offices of the Colony to retain their positions until their successors had been appointed.<sup>1</sup>

<sup>1</sup> Minutes of Council, Dec. 9, 1698; B. T. Va., vol. liii.

## CHAPTER IX

### The Governor: His Powers and Duties.

BY the terms of the oath prescribed by the charter of 1606, the Governor was required to carry out faithfully and thoroughly all orders and instructions which he should receive from the King, the Privy Council, or the Council for Virginia resident in England. Acting with the approval of his own Council at Jamestown, he was authorized to "rule and command" all the captains and soldiers as well as all the citizens to be found within the bounds of the Colony; and he was to do this, not according to the dictates of his own private judgment, but in conformity with regulations drawn for his guidance by the King and Council in London.<sup>1</sup> In the deliberations of the Council in Virginia, the Governor, or President as he was known under the charter of 1606, was entitled to cast a second vote in case his first had brought about a tie; in other words, he possessed apparently one vote as a member of the Council, and a deciding vote in addition when the members were equally divided in their suffrages.<sup>2</sup>

By the provisions of the charter of 1609, the powers of the Colony's chief magistrate were made even broader

<sup>1</sup> Brown's *Genesis of the United States*, vol. i., pp. 77, 78.

<sup>2</sup> *Ibid.*, p. 77; Brown's *First Republic*, p. 54. By instructions to Wyatt in 1621, the Governor was to have "but the casting voice in the Council"; see Randolph MS., vol. iii., p. 163.

than the same officer's powers were by the provisions of the charter of 1606. De la Warr, for instance, was declared in his commission to be the principal Governor, Commander, and Captain-General of Virginia, whether by land or sea. In all his public announcements, he assumed the general style of Lord Governor and Captain-General of the Colony and Admiral of its fleet. His powers included the right to put martial law in force at any time he should have reason to think the safety of the community demanded it; but in his ordinary civil and criminal administration, he was to direct and rule, punish and pardon, in strict accordance with such orders and instructions as he had received from the supreme authorities in England; and if none of these was applicable to a special case coming before him, then he was to be guided by his own judgment alone in reaching a decision, or by such regulations as he and the Council had thought proper to adopt for the general advancement of the Colony's welfare. All ordinances of this character, however, were required to be within the scope of the law-making power granted to the London Company by the terms of the new charter.<sup>1</sup>

At the end of Argoll's administration, which marked the close of a purely arbitrary form of government in Virginia, the powers and duties of the Colony's chief magistrate were once more determined in a general way by the provisions, first of his Commission, and, secondly, of his Instructions. A violent dispute arose during the course of Harvey's first incumbency of the office as to how far the Governor's powers, as embodied in these two documents, really extended. The mem-

<sup>1</sup> Charter of 1609, Brown's *Genesis of the United States*, vol. i., pp. 379 *et seq.*



bers of his Council, who were bitterly hostile to him on account of his unscrupulous conduct in general and his support of the Baltimore Patent in particular, boldly averred that he was only authorized to do what they advised and approved; and that his only independent power lay in his privilege of casting the decisive vote when there was a tie. Harvey, on the other hand, loudly asserted that his Councillors were mere assistants whose opinions he could accept or reject as he saw fit; and that he possessed an incontrovertible right as the King's representative to carry out his own wishes, purposes, and plans, unaffected by any opinion which the Council might entertain, provided that they were not inconsistent with the injunctions of his Commission and Instructions.<sup>1</sup>

The character of the Governor's Instructions did not vary substantially from the beginning to the end of the century; taken with the provisions of the commission, they formed an almost complete series of directions for the Governor's action under all those circumstances which were likely to arise during his tenure of office. In the commission granted to Harvey in 1636, it was expressly stated that he and his Council should possess all the powers exercised by any Governor and Council during the previous ten years, subject only to modification by such instructions as had already been, or should be, given by the King, Privy Council, or the Commissioners of the Plantations. At first, these instruc-

<sup>1</sup> British Colonial Papers, vol. vi., 1631-33, No. 11; vol. viii., 1634-5, No. 65; see also No. 37. In this last reference, Harvey, writing to Secretary Windebanke, admitted that his power in Virginia was "not great, it being limited by my commission to the greater number of voyces at the Councill table, and there I have almost all against me."

tions were by each Governor frankly disclosed to the members of the Council and of the General Assembly; and copies were filed among the records in the custody respectively of the Secretary at Jamestown and of the clerk of the House of Burgesses, where they were open to perusal by any citizen.<sup>1</sup> Howard, who reflected only too faithfully the arbitrary spirit of his royal master, made a complete alteration of this very proper and reasonable custom; during the course of his term of office, it was decided, either directly by himself or at his solicitation, that the Governor should be at liberty to reveal or withhold his instructions as he should think judicious. When Howard was about to visit England, he disclosed to his Council only those clauses which he thought it indispensable that they should know in order to administer properly the affairs of Virginia during his absence.<sup>2</sup> Andros was, in 1691, expressly empowered to communicate to his Council from time to time such and so many of his instructions as the Colony's interests would seem to demand.<sup>3</sup> Not unnaturally, the reservation of such a right to the Governors caused much complaint as it was one so capable of abuse. Several of these officers were openly accused of keeping their instructions in the dark so as to be able every now and then to lay before the Council or General Assembly a section, or the part of a section, that made to their interest. As long as the full tenor of his instructions was not known, it was impossible to charge a Governor with their violation, and thus an important check on his conduct never came into existence.<sup>4</sup>

<sup>1</sup> *Present State of Virginia*, 1697-8, section iv.

<sup>2</sup> Colonial Entry Book, 1680-95, p. 310; 1685-90, p. 21.

<sup>3</sup> Instructions to Andros, February, 1691-2, B. T. Va.; Entry Book, vol. xxxvi.

<sup>4</sup> *Present State of Virginia*, 1697-8, section iv.

In a general way, it may be said that the Governor exercised at least eighteen distinct powers: first, he appointed members of his Council temporarily in case of vacancy, and suspended them for cause; secondly, as a part of the General Assembly, his assent was necessary to the final passage of an Act; thirdly, his veto killed a measure<sup>1</sup>; fourthly, he called together, prorogued, and dissolved the General Assembly; fifthly, he not only sat at the head of the General Court, but also established courts of justice, commissioned judges, and all other officers engaged in the administration and enforcement of the laws; sixthly, his signature was necessary to the validity of all warrants on the public treasury; seventhly, he was authorized to pardon all offenders, unless they had been convicted of treason or wilful murder<sup>2</sup>; eighthly, he could grant reprieves and remit fines; ninthly, he collated to any church, chapel-of-ease, or other ecclesiastic benefice, as often as its pulpit became vacant; tenthly, he levied, armed, mustered, and commanded the militia, and could transfer them from one place to another in case it should be necessary to resist an attack; eleventhly, he executed martial law whenever it was required in time of an invasion or

<sup>1</sup> See Instructions to Berkeley, 1641-2; also the Commission of Howard.

<sup>2</sup> The Governor could only issue a proclamation of pardon in accord with the terms of his formal instructions. Berkeley, who had been ordered to except only Bacon in his Proclamation of Pardon issued February 10, 1676-7 took it upon himself to except others, and was afterwards condemned by the King for having exceeded his authority; see Hening's *Statutes*, vol. ii., p. 428. As the Governor had no power to pardon treason, Culpeper was unable to lighten the sentence of the ringleaders of the Plant-cutters' insurrection, which had been declared to be rebellion under an old statute because tending to diminish the royal revenues; Colonial Entry Book, 1681-5, p. 152.



insurrection,<sup>1</sup> built forts, fortified towns, and equipped them with ordnance and arms; twelfthly, he filled the office of Vice-Admiral for all the coasts and seas of Virginia subject to orders received from the Commissioners of Plantations and the English High Court of Admiralty; thirteenthly, he administered the oaths of allegiance and supremacy to all persons arriving in the Colony with the purpose of settling there, and also to all mariners and merchants stopping there only for a time, should he have reason to question their loyalty; fourteenthly, he could appoint ship-masters and commission them to execute martial law in the event of a mutiny or conspiracy among their seamen; fifteenthly, he, with his Council's consent, granted all patents to the public lands; sixteenthly, he designated the places for new markets, custom-houses, and ware-houses, and appointed the officers who were to have charge of them; seventeenthly, he issued proclamations; and finally, he seems, towards the end of the century, to have possessed the right to naturalize foreigners, a right previously enjoyed by the General Assembly.<sup>2</sup>

<sup>1</sup> It was by his right of proclaiming martial law that Berkeley justified the summary executions that followed the collapse of the Insurrection of 1676, although, when the power was exercised, all resistance had ceased, and the real reason for which the power had been originally granted was no longer in operation.

<sup>2</sup> B. T. Va., Entry Book, vol. xxxvi., p. 127; Colonial Entry Book, 1606-66, p. 220; Robinson Transcripts, p. 48; Beverley's *History of Va.*, p. 188; see also Proclamation of Andros, 1692, in Northampton County Records, vol. 1689-98, p. 217; Randolph MS., vol. iii., p. 328; B. T. Va., 1692, No. 128. By Instructions given to Howard, the Governor's power to remit fines was limited to ten pounds sterling or under. If the fine exceeded that amount, he was required to report to the King the nature of the offence, and the like; see Colonial Entry Book, 1685-90, p. 30. Speaking in a general way of the powers which he had exercised as Lieut.-Governor, Nicholson said in 1692, with justifiable pride, that he had

In examining this long and varied list of powers, they will be found to fall under a few general heads. The Governor was, first, the personal representative of the King; as such he granted patents to the public lands, made appointments to most of the offices of public trust and profit, summoned, prorogued, and dissolved the General Assembly, gave or refused assent to the latter's Acts, made peace or declared war in the Colony according to his best judgment, and on all public occasions performed the ceremonial part of a viceroy; secondly, he was the King's Lieutenant-General and Commander-in-chief; as such he raised and exercised supreme control over all troops, appointed and commissioned all military officers, and ordered the erection or destruction of forts and fortifications; thirdly, he was the King's Vice-Admiral; as such he took account of all maritime prizes, was the supreme commander of all ships and seamen, and imposed or removed embargoes and the like; fourthly he was the King's Lord Treasurer; as such he issued warrants for the payment of the public moneys used for the support or advancement of the Colony's government; fifthly, he was the King's Lord Keeper; as such he used the colonial seal in passing formal public documents; sixthly, he was the King's Chief Justice, Chief Baron, and Chancellor, and as such presided in the General Court, which, as we have seen, embraced in its single jurisdiction the several jurisdictions of the King's Bench, Common Pleas, Chancery, Exchequer, and Ecclesiastic Courts in England; sev-

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aimed to promote the service of God by taking care of the clergy and enforcing the laws against vice; had asserted the royal prerogatives on all occasions; had looked after the royal income, which he had left greater than before; had increased the militia and brought them in good method; and, finally, had always respected the advice of his Council; B. T. Va., 1692, No. 128.

enthly, he was the supreme President of the Council, and as such led and shaped the deliberations of that body; and finally he was practically the King's ecclesiastical representative, and as exercising the powers of a bishop-in-ordinary, granted licenses of marriage, inducted newly presented clergymen into their livings, signed all probates and administrations, and was the arbiter in all disputes involving the interests of the Church and its ministers.<sup>1</sup> In all, or nearly all these capacities, it seems to have been necessary for the Governor to act subject to the advice and approval of his Council.

There was one notable restriction upon the Governor's power to fill all offices of trust and profit in the Colony by his own appointment: if such an office happened to be one always occupied by a person who had received his commission from England under the royal seal, then the Governor was only authorized, in case that office became vacant by the death, resignation, or removal of the incumbent, to nominate a new incumbent for the interval which must pass before the position could be again filled by the appointment of the English authorities.<sup>2</sup> Among the minor offices coming within this category were those of the captain of the fort at Point Comfort so long as that fortification should be maintained, the Muster-Master-General, who had charge of the militia drill, and the Surveyor-General, who exercised a general supervision over all the persons licensed to lay off the boundaries defined in newly issued patents to the public lands.<sup>3</sup>

<sup>1</sup> *Present State of Virginia*, section iv.; *Beverley's History of Virginia*, p. 188; Randolph MS., vol. iii., p. 208.

<sup>2</sup> Colonial Entry Book, 1685-90, p. 17; B. T. Va., Entry Book, vol. xxxvi., p. 107.

<sup>3</sup> See Instructions to Berkeley, 1641-2, Colonial Entry Book, 1606-62, p. 222.



In all those cases in which the Governor was impowered to remove an incumbent from his office, he was required to do so only for just cause, and this cause had to be promptly reported to the King and the Committee of Foreign Plantations.<sup>1</sup>

The power exercised by the Governor, with the advice and consent of the Council, through the medium of public proclamations, seems to have been extensive, especially during the early periods of the Colony's history, and not infrequently led to serious abuses. The encroachment was carried so far in 1642-3 that an Act of Assembly was passed in the course of that year depriving the injunctions contained in such documents of all legal validity when in conflict with the provisions of existing statutes. It was not permissible for any person to justify disobedience to any one of these statutes on the ground that he was acting in accord with the terms of a proclamation.<sup>2</sup> No Governor had so systematically or so persistently employed this instrument in derogation of the rights of the legislature as Harvey had done<sup>3</sup>; and to some extent, no doubt, the recollection of its perversion by him, and the evil consequences following, had its influence in bringing about this prohibitive measure, directly designed as it was to prevent the repetition of such conduct. The legitimate use of the proclamation was limited to giving a public notice. An instance of this use, among the hundreds which might be mentioned, occurred in 1691-2, when a patent was granted to Thomas Neal to establish a system of post-offices in America. His

<sup>1</sup> Instructions to Andros, 1691-2, B. T. Va., Entry Book, vol. xxxvi., p. 127.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 264

<sup>3</sup> See Campbell's summary of Harvey's misconduct, in his *History of Virginia*, p. 194.

deputy in Virginia was Peter Heyman. When Heyman was nominated to this position, Andros issued a proclamation in which, after announcing that fact, he instructed all the Colony's different authorities to assist the new deputy as far as possible in promoting the success of his performance of the duties of his new position.<sup>1</sup>

The Governor's power to issue warrants for payment of the public moneys was hedged about with numerous precautionary provisions to prevent its abuse. The Council in 1683 adopted a resolution that, after the salaries of the Governor and the English Auditor-General of the Colonies had been disbursed, no sum was to be drawn out of the public treasury without the Governor's warrant having first received the approval of at least five members of the Board.<sup>2</sup> About ten years afterwards, Andros was instructed by the Commissioners of Trade and Plantations to submit to the General Assembly from time to time all accounts for the expenditure of funds raised under the authority of its Acts.<sup>3</sup> The endorsement of the warrant by five of the Councillors was probably still necessary, but this new provision was a much more important step for the protection of the public interests, as the members of the Council were generally too much disposed to yield to the influence of the Governor, on whose good will their tenure of office practically depended.

The power to call the General Assembly together seems to have belonged to the Governor from the earliest date, as it formed one of the most important

<sup>1</sup> Colonial Entry Book, 1680-95, February, 1691-2.

<sup>2</sup> *Ibid.*, 1680-95, p. 167.

<sup>3</sup> Instructions to Andros, 1691-2, B. T. Va., Entry Book, vol. xxxvi., p. 126.

functions of his representative character. We find it expressly bestowed on him by the formal articles of administration put in force by Wyatt in 1621.<sup>1</sup> Thirty-nine years later, when the system prevailing during the Protectorate gave way to the new order brought about by the restoration of the Stuarts, the Governor was again invested with the right to summon the General Assembly<sup>2</sup>; but Berkeley, as we have seen, was satisfied to retain for fourteen years the same House of Burgesses, changed only so far as was made necessary by the death or resignation of a few members from time to time. The power of calling the General Assembly together was, as will be shown later on, one which the Governor was compelled to exercise within certain periods fixed by law. When an extraordinary session of this body was held, it was held at the summons of this officer acting under the advice and with the approval of the Councillors.<sup>3</sup> At the end of the century, he seems to have possessed the power to dissolve the Assembly on his own responsibility alone.<sup>4</sup> On the other hand, during the period of the Commonwealth, he was required first to obtain the Council's consent<sup>5</sup>; at this time, there was a keen dispute in progress between the Governor and the Councillors, on the one side, and the Burgesses,

<sup>1</sup> Hening's *Statutes*, vol. i., pp. 110-13.

<sup>2</sup> *Ibid.*, p. 531; Randolph MS., vol. iii., p. 288.

<sup>3</sup> Instructions given to Berkeley in 1641-2 declared that the Assembly must be summoned by the Governor and Council "as formerly"; Colonial Entry Book, 1606-62, p. 221. In 1681, the advice of seven councillors was required; see Colonial Entry Book, 1680-95, p. 113.

<sup>4</sup> See chapter in Beverley's *History of Virginia* relating to Governor.

<sup>5</sup> "The Governor and Council for many causes do think fit to declare that they do now dissolve this present Assembly, etc."; Hening's *Statutes*, vol. i., p. 499.



on the other, as to whether the approval of the latter body was not essential to the legality of the order for a dissolution.<sup>1</sup> Occasionally, a General Assembly would be formally prorogued by the act of the Governor, and at a later date by public proclamation declared to be dissolved.<sup>2</sup>

The Governor, as has been already pointed out, possessed the right of vetoing any Act failing to receive his approval. Several of the Colony's chief magistrates seem to have gone so far,—possibly in their character as a part of the General Assembly,—as to introduce radical alterations into measures already passed by the House of Burgesses. This was done on at least one occasion by Culpeper.<sup>3</sup> He reached Jamestown from England on Saturday, and proceeding immediately to Green Spring, dispatched a formal message to announce his arrival to the Assembly, which had arranged all their Acts in final shape for the Council's assent and the Governor's signature. On Monday, he went down to Jamestown, and having ordered copies of all these Acts to be brought to him, sitting, no doubt, as the presiding officer of the Upper House, he examined them with great care, and with his pen made many important erasures, and perhaps additions also. He afterwards very complacently reported to the English Government that he had taken "the sting" out of them all. At this time, he had hardly been in the Colony more than forty-eight hours altogether, and was without the slightest knowledge, based on personal

<sup>1</sup> When Berkeley became Governor again in 1659-60, the General Assembly passed an Act that the House could only be dissolved with the consent of a majority of its members; Hening's *Statutes*, vol. i., p. 531.

<sup>2</sup> B. T. Va., 1692, No. 134.

<sup>3</sup> Colonial Entry Book, 1681-5, p. 155.

observation and experience, of its real needs. His alterations probably extended only to expressions which seemed to him to be a too free assertion of popular rights. But his conduct on this occasion was a not inapt illustration of the spirit of some of the Governors, particularly at the very beginning of their terms; having just arrived from England deeply impressed with the importance of their representative character, and regarding the citizens of Virginia as being far more provincial than even the inhabitants of the remotest rural district of the Mother Country, and, therefore, essentially ignorant, they were disposed at first to look upon the Burgesses collectively very much as an older person looks upon a child, namely, as one who is at once lacking in judgment and eager to contemn authority. It was natural and just that the Assembly should have been strongly inclined to contest a Governor's right to exercise the power of vetoing their Acts when they were perfectly aware that the more inexperienced this officer was, the quicker he would be to make use of that power, and, therefore, the more destructive of the Colony's best interests it would become.<sup>1</sup> Even the milder process of taking "the sting" out of their Acts could not have been agreeable to men who had been careful and deliberate in framing each of these measures; especially if they knew that the person assuming the right to do this had hardly yet recovered from the sickness incident to his first voyage across the Atlantic.

From the foundation of the Colony, one of the Governor's most important duties was to inform the

<sup>1</sup> Charles II, complained that the Assembly of 1685 spent its time in "frivolous debates," and in contesting the Governor's power of veto; see Hening's *Statutes*, vol. iii., p. 40.

King, through either the Privy Council or the Commissioners of Plantations, of the general progress of affairs in Virginia. During the short time the first charter remained in force, the President was required by his oath to make periodically such a report to the Resident Council in England, which in its turn submitted to the King the information thus acquired.<sup>1</sup> Instructions were given to Wyatt in 1621 to send to the Council of the London Company sitting in London a full account of the Colony's condition certainly once every three months<sup>2</sup>; but after the revocation of the letters-patent in 1624, this report had to be transmitted only once in the course of a year. Occasionally, the Governor was instructed as to the special subjects on which he was expected to touch at length; for instance, in 1661-2, Berkeley was directed to draw up a detailed statement as to the improvements brought about by the recent industry of the planters; and also as to how many new patents had been issued; and as to how many settlers had lately been established in the Colony.<sup>3</sup> The supplementary instructions to the same Governor in 1676, required him to report annually to the Council of Trade and Plantations and also to the Commissioners and Farmers of the Customs, the entire quantity of tobacco exported from Virginia; and also to transmit a full description of all the iron furnaces and other works of the same general character which were either in actual operation, or under advisement.<sup>4</sup>

<sup>1</sup> Orders of Council, 1606, Brown's *Genesis of the United States*, vol. i., p. 78.

<sup>2</sup> Randolph MS., vol. iii., p. 162.

<sup>3</sup> Colonial Entry Book, 1606-62, p. 274; Randolph MS., vol. iii., p. 280; *Va. Maga. of Hist. and Biog.*, vol. iii., p. 20.

<sup>4</sup> Instructions to Berkeley, 1676, Colonial Entry Book, 1675-81, p. 114.



In 1679, the Governor and Council were again ordered to make a report once every three months as to all matters touching the civil, military, and ecclesiastical welfare of the Colony. They were to give particular information, not only as to recent political events, but also as to all propositions brought forward with a view to the passage of new laws; it would seem that previously the Governor and Council had been content simply to transmit copies of all orders and acts adopted by the General Assembly.<sup>1</sup> The reason for demanding a more detailed account lay in the greater interest now felt in Virginia by the English authorities in consequence of the increase of its wealth and population, and also in their determination to find out the degree of zeal shown in the enforcement of the Navigation Acts.<sup>2</sup>

Howard was commanded by James II to transmit authentic copies of all acts recently passed by the General Assembly; he was warned that, should he neglect to obey, he would incur the King's highest displeasure; and what was probably equally terrifying to his greedy spirit, would be deprived of his entire salary for the year in which he failed to comply with the order. No excuse whatever was to be accepted to condone the offense, should he be guilty of it.<sup>3</sup> Nicholson, by the instructions given to him in 1698, was required to return once every six months to the Commissioners of the Treasury, or the Treasurer of England, as well as to the Commissioners of Plantations, a full account of all the warrants for the payment of money

<sup>1</sup> Colonial Entry Book, 1676-81, p. 410.

<sup>2</sup> *Ibid.*, vol. xlv., pp. 406, 407. These journals are now preserved in the State Paper Office in London and are among the most valuable of all the records relating to Colonial Virginia in existence.

<sup>3</sup> Instructions to Howard, Colonial Entry Book, 1685-90, p. 25.

attested by him as Governor, the amount of each sum disbursed, the person to whom it was paid, and the purpose for which it was expended. The object of this regulation was declared to be to show the King that the revenue of the Colony had been properly applied.<sup>1</sup>

<sup>1</sup> B. T. Va., Entry Book, vol. xxxvii., p. 275.

## CHAPTER X

### The Governor: His Residence

HOW far was the Governor compelled, during his time of office, to reside in Virginia? In the course of 1675, the agents sent to England to procure the confirmation of certain rights by formal charter, urged that one of the provisions of the proposed document should be that the Governor should, during the whole of his term, be a resident of the Colony; and if called away to some other part of America or to England, for a comparatively short time, should transfer the powers and duties of his position, during that interval, to a Deputy-Governor, who should be an actual citizen of Virginia, and the owner of an estate there.<sup>1</sup> When the agents submitted this request, Berkeley still occupied the office of Governor, and, except in the time of the Commonwealth, had not been absent more than twice since the date of his first appointment, and then only to transact important public business in London. No one whose term approached his in length, during the Seventeenth century, identified himself with all those interests springing from a permanent residence in the community more thoroughly than he did; and it appears the more remarkable that, in the very year of his final departure for England, a royal proclamation should have been

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 524.



issued directing that thereafter the incumbent of the same office should, for the time being, live in Virginia.<sup>1</sup> This regulation did not remain long in force,—perhaps, because there was no urgent reason why it should be permanently maintained, inasmuch as the Lieut.-Governor, who took the place of a Governor indisposed to leave England in order to occupy his post oversea, was not likely to be less capable than his superior in performing the duties of that post. Indeed, he was apt to be more capable, as so many of these officials acquired the position by influence at Court, independently of talent, experience, and personal energy. The Lieut.-Governor, on the other hand, was likely to be a man who, though less conspicuous in rank, had been recommended by these very qualities, which alone had made him a person of mark. Nor was he apt to be less zealous in discharging the duties of the post, inasmuch, as being less distinguished and fortunate than his superior, he looked upon his office as furnishing an opportunity to win a reputation for efficiency and usefulness which would serve him well at a later period. Above all, as he was not so much inclined to regard his appointment as Lieut.-Governor as sounding his exile to a remote corner of the world, he was not moved to the same degree to utilize this period in accumulating, by every form of extortion that could be safely ventured upon, the largest sum possible to compensate him for so long an absence from England. The most zealous, energetic, and public spirited of all the later occupants of the post of Governor was Nicholson, whose first connection with Virginia was in the character of Lieut.-Governor. The attitude

<sup>1</sup> See Proclamation of Charles II, dated 1677, entered in Surry County Records, vol. 1671-84, p. 205, Va. St. Libr.

of this officer towards the Colony was in striking contrast with that of his predecessors, Howard and Culpeper.

It was not the substitution of a Lieut.-Governor for the Governor through the whole of the latter's term that the citizens of Virginia condemned, but rather the repeated absence, for varying periods, of those holding the highest office in the Colony; this was the real meaning, for instance, of the minute which the Council in 1690 entered in their journal declaring that the people's welfare required that the Governors, during their incumbency, should make Virginia their chief place of residence. Not content with the knowledge that this minute would fall under the notice of the Commissioners of Plantations when they came to read the copy of the journal which would be sent to England, they appear to have petitioned the King directly to compel every person nominated to the Governorship to repair at once to the Colony, and to remain there until the end of his term in the faithful and punctual performance of his duties.<sup>1</sup> The Board of Trade seems to have looked upon this request as reasonable and proper; in 1699 that body addressed a letter to Nicholson, recently appointed to the full Governorship, in which they dwelt with emphasis on the great inconveniences and drawbacks of leaving the duties of patent offices to deputies, who, on account of the small rewards they received during their incumbency, might be tempted to make indirectly out of the position enough to compensate them for sharing their emoluments with their superiors. Although the Governorship was not specifically named as one of the patent offices referred to, the inference is strong that it also was

<sup>1</sup> B. T. Va. Entry Book, vol. xxxvi., p. 28.

intended to be embraced in the scope of this official warning.<sup>1</sup>

Where did the Governor reside during his sojourn in the Colony? The earliest incumbent of the position to consider the question of building a permanent dwelling house for all the persons who should, in succession, hold the office, was Ratcliffe, the first to follow Wingfield as President of the Council. Such a house was perhaps even begun by him, and on as large a scale as the facilities for construction at the time permitted, for Smith uses the expression "Ratcliffe's palace," the erection of which he promptly stayed when he assumed the chief power, on the ground that it was a "thing" of no practical value.<sup>2</sup> It was not until Gates became the Governor of Virginia that a residence for this officer was built. The actual work of construction was done by the Company's servants. Argoll, a few years afterwards, enlarged the house; and that it was standing in good repair when Yeardley arrived was shown by the order given him to convert it into a permanent official residence for the occupation of each of the Governors in succession.<sup>3</sup> This residence seems to have been situated at Jamestown. In 1620, Yeardley erected on the land assigned for the Governor's more convenient support, a second dwelling house intended exclusively for the enjoyment of each incumbent of the office in turn.<sup>4</sup> Harvey seems to have owned the house

<sup>1</sup> See Board of Trade to Nicholson, June 26, 1699, B. T. Va., vol. xxxvii., p. 330.

<sup>2</sup> *Works of Captain John Smith*, vol. i., p. 192, Richmond edition.

<sup>3</sup> Instructions to Yeardley, 1618, *Va. Mag. of Hist. and Biog.*, vol. ii., p. 158; Tyler's *Cradle of the Republic*, p. 108.

<sup>4</sup> In a grant to George Harrison by Yeardley, dated March 6, 1620-1, he referred to the land as situated "over against his newe mansion House in Southampton Hundred." This was where the



which he occupied at Jamestown.<sup>1</sup> As an Act of Assembly passed in 1639 required the Governor to reside at that place, it is probable that some of those who had filled the post had either lived on their own estates, or had, for the greater part of their time, dwelt in the mansion erected on the Governor's plantation situated in Southampton Hundred. When called to Jamestown during the sessions of the General Court or of the General Assembly, they had perhaps found temporary board and lodgings in a tavern.

In 1643, only a short time after Berkeley's arrival in Virginia, he received the grant of an estate of nine hundred and eighty-four acres known as Green Spring, situated not far from Jamestown, and apparently a part of the tract of three thousand acres belonging to the office of Governor. This grant was confirmed in 1646. When resurveyed, the tract was found to contain one thousand and ninety acres; and to this area, there was now added, under a lease for twenty-one years, an adjoining tract of seventy acres carved out of the estate attached to the Governor's office. The patent to the entire property of Green Spring was, in 1652, renewed to Berkeley and Bennett in the name of the Keepers of the Liberties of England; but so soon as the Commonwealth came to an end, a third patent was granted to Berkeley alone in the name of the King; and this patent was, in 1664, confirmed by the Council, and again in 1674. In the meanwhile, the lease to the small tract of seventy acres had also been devised to

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Governor's tract had been laid off; see British Colonial Papers, vol. i., Doct. 53. It was, doubtless, this mansion which was designated in a lease to Philip Ludwell as "formerly ye mansion house of ye Governors"; *Va. Maga. of Hist. and Biog.*, vol. v., p. 245.

<sup>1</sup> British Colonial Papers, vol. vi., No. 54.

Berkeley for a term of ninety-nine years.<sup>1</sup> The dwelling house at Green Spring, as shown by the extent of its existing ruins, had a frontage of forty-eight feet and a width of about forty-three, whilst each of its wings had a length of about twenty-six feet, and a breadth of about sixteen. There was a thickness of two and a half bricks in the front walls above the water table, and of two bricks on either side. Each fireplace had a width of about four feet and a depth of about three feet and eight inches. The chimney seems to have stood directly in the middle of the building. The whole mansion was partitioned off into six rooms, with a central hall about ten feet in width running from one end of it to the other.<sup>2</sup>

Culpeper also seems to have resided at Green Spring during his occupation of the office of Governor. Howard, except when the General Assembly was in session, is supposed to have passed the greater part of his time at Rosegill, the spacious and comfortable home of Colonel Wormeley, situated in Middlesex county.<sup>3</sup> Like Culpeper, Howard was allowed annually one hundred and fifty pounds sterling for the payment of house rent; and this entire sum he probably continued to save by using, from time to time, the hospitality of the members of his Council. Under these circumstances, it is not very probable that he obeyed with zealous alacrity the instruction received from England to propose to the Assembly the building of a Governor's

<sup>1</sup> Colonial Entry Book, Acts for 1674, *Va. Maga. of Hist. and Biog.*, vol. v., p. 383. From the numerous confirmations, it looks as if Berkeley's title was never in fee simple, although that conclusion does not follow positively.

<sup>2</sup> Tyler's *Cradle of the Republic*, p. 108. The situation of the chimney is described as "central."

<sup>3</sup> Tyler's *Cradle of the Republic*, p. 108.

mansion, the model of which was to be sent to the Commissioners of Plantations for approval.<sup>1</sup> If such a model was ever transmitted, no further steps were taken during Howard's term to erect the dwelling house under advisement. But the Commissioners had not dropped the project from their thoughts; in 1691-2, Andros was ordered by them to choose a suitable site for such a mansion, and this having been done, to call upon the General Assembly to appropriate a sum of money sufficient to meet all the expense of its construction. He was also commanded to send to England a model of the residence as soon as one had been agreed upon.<sup>2</sup> Only a short time before, Lieut.-Gov. Nicholson, in opening the session of the House of Burgesses, had urged upon their attention the King's wish that a dwelling house for the Governors should be built.<sup>3</sup> But neither Nicholson nor Andros, though seeking to enforce a royal injunction, were able to induce that body to provide the requisite funds. In the first place, the House shrank from imposing the additional taxation which the erection of an official mansion would have at once rendered necessary; such a mansion, if it was to be commensurate with the Governor's dignity, could only have been constructed by mechanics directly imported from England for that purpose at great expense. In the second place, the House knew very well that the Governors themselves were not favorable to the erection of such a building, as it would inevitably increase for them the cost of living; the possession of an official mansion signified that the Governor would be

<sup>1</sup> Colonial Entry Book, 1685-90, p. 55.

<sup>2</sup> Instructions to Andros, Feb., 1691-2, B. T. Va., Entry Book, vol. xxxvi., p. 138.

<sup>3</sup> B. T. Va., 1691, No. 28.



expected to entertain very lavishly, a course which men like Howard and Culpeper, whose chief aim during their stay in Virginia was to enrich themselves, were determined not to follow. Such a consideration also had its weight with Nicholson, although of a liberal spirit, because as Lieut.-Governor he was entitled to only one half of the emoluments of the office, a sum hardly sufficient to permit him to throw his doors wide open to the throngs of prominent citizens gathering at Jamestown during the sessions of the General Court and General Assembly. Even when he became Governor, he does not seem to have supported with heartiness the project of building a permanent residence for himself and his successors. The Commissioners of Plantations, finally becoming irritated and suspicious in consequence of the repeated obstructions to the consummation of their wishes, openly declared that the real stumbling block was the annual appropriation of one hundred and fifty pounds sterling for house rent, and on their recommendation, the King decided to discontinue this allowance. In informing Nicholson of this determination, the Commissioners drily remarked that they expected soon "to hear of his endeavours" to advance the plan of erecting a Governor's mansion.<sup>1</sup> No such mansion, however, was built at Jamestown; and within a short time after the Commissioners' letter was written, the capital was removed to Middle Plantation.

<sup>1</sup> B. T. Va., Entry Book, vol. xxxvii., pp. 252, 334.

## CHAPTER XI

### The Governor: His Remuneration

AS already stated, the Governor of Virginia received, after the expiration of Berkeley's term, who possessed a house of his own at Green Spring, an allowance of one hundred and fifty pounds sterling each year. What additional income, whether in the form of salary or perquisites, did he derive from his occupation of the position? From the earliest to the latest decade in the Colony's history during the Seventeenth century, the incumbents of the office complained of the insufficiency of their remuneration; and there was just ground for this discontent on the part of those Governors who maintained homes of their own, as they were expected to entertain very generously. "The place I hold in this Colony," wrote President Percy to his brother, "cannot be defrayed with small expense, it standing upon my reputation, being Governor of Jamestown, to keep a continual and daily table for gentlemen of fashion about me."<sup>1</sup> Recognizing that there would be extraordinary charges imposed upon the Governor by the social demands of his office, the Company sought, in 1618, to furnish him a liberal support by assigning to the position in perpetuity a tract in James City Corporation covering three thousand acres. This consisted of very fertile ground either seized or pur-

<sup>1</sup> See Letter in Brown's *Genesis of the United States*, vol. i., p. 500.

chased from the Paspeheigh Indians, and situated not far from Jamestown.<sup>1</sup> The plan adopted for the cultivation of these lands was to bring over tenants from England selected especially for their experience in tilling the soil in their native country. Fifty such tenants were imported by Yeardley in 1618 at the Company's expense.<sup>2</sup> Ten years afterwards, Lady Yeardley, who had recently become a widow, delivered to her husband's successor seven cows and five heifers belonging to the Governor's estate. This number of cattle had been received by Yeardley, when he had displaced Wyatt.<sup>3</sup> Down to 1629 apparently, the Governor's support was derived entirely from the labor of the numerous agricultural tenants and servants attached to the lands assigned to his office; but in the course of that year, this means of assuring him a maintenance, and also, no doubt, some additional remuneration, was seriously diminished, if not nearly destroyed, by the policy now adopted of leasing the lands for a period of ninety-nine years at what was probably a small rental.<sup>4</sup> Harvey complained very bitterly of the plight in which the Governor's office was left, and he urged the English authorities to reserve for the proper support of that office "the customs of at least forty thousand pounds of tobacco to be annually imported into England from Virginia upon the Governor's

<sup>1</sup> *Va. Maga. of Hist. and Biog.*, vol. v., p. 245.

<sup>2</sup> See Brown's *First Republic*, p. 323; Tyler's *Cradle of the Republic*, p. 147. "The Governor had 3000 acres assigned him at the mouth of the Chickahominy"; see Letter of Wyatt, 1625, Randolph MS., vol. iii., p. 181.

<sup>3</sup> Robinson Transcripts, p. 72.

<sup>4</sup> British Colonial Papers, vol. v., No. 22. As late as 1637, these leases assured some income for the office of Governor; see Accomac County Records, vol. 1632-40, p. 94, Va. St. Libr.



own account." This petition was approved, and an order was issued that payment should be made regularly on the twenty-fifth of every March. It would seem, however, that this arrangement was to terminate as soon as Harvey's administration came to an end.<sup>1</sup>

Harvey's predecessors apparently had all enjoyed the benefit of the fines and forfeitures accruing from judicial sentences; and this source of income was by a special royal warrant also bestowed on him in consideration of his satisfactory performance of his duties as the presiding judge of the General Court.<sup>2</sup> He, nevertheless, remained discontented; and not unreasonably so, for, in March, 1631, the House of Burgesses, in an address to the Privy Council, testified to the fact that the charge on his pecuniary means was so heavy and constant that he was compelled to spend a part of his private estate to meet his public expenses; and they urged with great earnestness that he should be paid an adequate salary.<sup>3</sup> Harvey himself supplemented this petition with a prayer that the Privy Council should "take his case into their compassionate cares." During the whole of his term so far as it had then passed, he had, according to his own declaration, filled the office of Governor "without any meanes of usuall entertainment" to enable him to bear the great drain which it created on his purse. "I might as well be called the host as the Governor of Virginia," he ruefully added; "if some speedie remedie and reliefe be not found for me, not only my creditt but my heart will break."<sup>4</sup>

<sup>1</sup> Propositions of Harvey Touching Virginia, Aug., 1629, British Colonial Papers, vol. v., Nos. 22, 23; see also vol. v., No. 94 I.

<sup>2</sup> British Colonial Papers, vol. v., No. 25.

<sup>3</sup> Randolph MS., vol. iii., p. 219.

<sup>4</sup> British Colonial Papers, vol. vi., No. 54. The date of this letter was May 27, 1632.

It is to be inferred from a petition presented by Harvey to the English authorities when he was about to return to Virginia in the winter of 1635-6 that eight hundred pounds sterling was the amount generally provided to meet the cost of the Governor's transportation to the Colony. This sum, it seems, was ordered to be paid to him on condition that he supplied, at his own expense, the victuals which would be needed by his ship's company, and also furnished the money to meet the charge of the seamen's wages. This condition, it would appear, really imposed an extraordinary burden, and instead of leaving him with some balance in his favor, would have subjected him to a positive loss. Harvey, in calculating the probable extent of this loss, estimated that it would be necessary for him to provide at least one thousand pounds sterling; in other words, he would be compelled to pay about two hundred pounds sterling in excess of the allowance of eight hundred; and on his representations as to the damage which would thus fall on him, he was granted permission to carry over to the Colony such a quantity of merchandize as would, by the proceeds from its sale, recoup him for the deficit. The ship in which he sailed proved to be so leaky that he was forced to return to Plymouth; and he finally departed for Virginia in an ordinary merchantman without being able to take with him either his goods or the large number of persons he had chosen to accompany him.<sup>1</sup>

By 1637, the regular salary paid to the Governor seems to have amounted to one thousand pounds sterling

<sup>1</sup> Petition to Privy Council, Febry., 1635-6, British Colonial Papers, vol. ix., Nos. 4, 5, 6, 11, 27. In a later communication to the Privy Council, Harvey stated that the allowance made to a Governor setting out for Virginia was five hundred pounds sterling.

annually.<sup>1</sup> Not long after Berkeley undertook the duties of the office, he not only obtained the grant to the Green Spring estate, already referred to, but also received as a gift from the Assembly, "in consideration of many favors manifested towards the Colony," two houses and an orchard situated within the confines of Jamestown.<sup>2</sup> It seems probable that, in the beginning, he occupied one of these houses as a residence, but later on both appear to have been rented out with a view to increasing his income. The civil commotions in England having caused the suspension of the payment of the Governor's regular salary, derived, no doubt, as in Harvey's time, from the duties on the tobacco imported into the Kingdom, the Assembly found it necessary to pass a special Act to provide the Governor with a definite and reliable support. That body, however, was at great pains to declare that this provision was designed to be only for a time, and that it should not carry the weight of a precedent. The preamble to this Act throws an interesting light on the spirit animating the Burgesses at that remote day. "We have an eye to the Honor of the (Governor's) place," so it ran, "but also have entered into a deep sense and consideration of the duty and trust which the public votes and suffrages have cast upon us, under which is comprehended as the most special and binding obligation, the preservation of the rights and properties of the people, which the course now intended seems to threaten." "Since the foundation of the Colony," they proceeded to state, "there had been no such concurrence or pressure of affairs, and they hope to God it will never be again"; therefore, in order to meet what was perhaps considered

<sup>1</sup> British Colonial Papers, vol. i., Doct. 20.

<sup>2</sup> Henning's *Statutes*, vol. i., p. 267.



to be an emergency certain to pass as soon as affairs became settled in England, so as to allow the authorities there to resume payment of the salary as before, the Assembly directed a public tax, amounting to two shillings for each tithable, to be levied and delivered to the collectors, not in the form of money or tobacco, but in the form of corn, wheat, malt, beef, pork, peas, capons, calves, goats, kids, turkeys, geese, butter, and cheese.<sup>1</sup> This unusual requirement shows how temporary this Act was designed to be, but circumstances soon made the regulation a permanent one. The royal government in England was now sinking steadily into deeper ruin, and if the head of the administration in Virginia had been compelled to rely upon the English customs during this period of commotion for his only support, he would have gone a very long time without any remuneration whatever for his services. His maintenance having been once thrown on the colonists, there was no real prospect of its being again transferred to the English treasury; and in indulging such a hope, the General Assembly itself was probably secretly aware that it was nursing a mere delusion, and in formally expressing that hope was simply preparing the people to assume the new burden uncomplainingly.

Four years after this special tax was imposed for the Governor's benefit, we find it still laid with the regularity of the ordinary assessments for other public purposes. An apportionment was made for each county in proportion to the number of its tithables. Sometimes, one county would pay its share in tobacco alone, and another in grain and provisions; sometimes, the same county would pay in all three forms. For instance, in Lower Norfolk, in 1647, the portion of the

<sup>1</sup> Henning's *Statutes*, vol. i., p. 280.

Governor's salary assigned to that county for collection consisted entirely of tobacco; four years afterwards, each tithable residing there was required to contribute, in addition to a certain amount of tobacco, at least half a bushel of corn, which was ordered to be delivered at a designated place.<sup>1</sup> All the other counties were directed to follow the same course.

After the establishment of the Commonwealth, the same method of raising the Governor's salary was strictly adhered to. There were, in 1654, fourteen collectors of public taxes in Lancaster county, and each was entered in the records as responsible for the payment to Governor Bennett of a specific proportion of the tobacco which they should receive. This single county contributed during this year not less than thirteen thousand pounds of tobacco to the maintenance of that officer; it is, however, possible that a part of this sum represented what had been in arrear for a considerable period<sup>2</sup>; or it may be that an unusually large levy was, at this time, laid for his benefit throughout the Colony, since only two years afterwards, the amount of his salary proper was fixed at twenty-five thousand pounds of that commodity. This was intended to be the principal remuneration for his services during the course of every twelve months, but in addition he was allowed, as a permanent part of his official income, the varying and probably never very large sums derived from the fees paid into the hands of the commander of the fort at Point Comfort by the incoming ships, and also from the fees accruing from marriage and other licenses.<sup>3</sup> In the York county levy

<sup>1</sup> Lower Norfolk County Records, vol. 1646-51, pp. 57, 200.

<sup>2</sup> Lancaster County Records, vol. 1652-56, p. 174.

<sup>3</sup> Randolph MS., vol. iii., p. 268; Hening's *Statutes*, vol. i., pp. 498, 523.

for November, 1657, an assessment in favor of the then Governor to the extent of five thousand pounds of tobacco was entered; and so in the levy in Lower Norfolk for November, 1659. After 1660, the amount of this commodity collected in the different counties seems to have been even larger; for instance, in York, in 1661, thirty-four thousand pounds were contributed by its tithables alone; in 1665, thirteen thousand; in 1668, eight thousand; whilst in 1661 about seventeen thousand were levied in Lower Norfolk also; and the proportion for the years following was of the like volume. Berkeley had now been recommissioned Governor, and his popularity was no doubt reflected in this extraordinary public liberality in his favor. In 1659-60, his annual salary had been definitely fixed at fifty thousand pounds of tobacco; nor did his remuneration stop there,—by a formal Act of Assembly, the castle duties,<sup>1</sup> and the fees derived from the granting of various licenses, enjoyed by his predecessor, were continued to him<sup>2</sup>; and he also received as a gift the round sum of seven hundred pounds sterling out of the fund accumulated from the proceeds of the tax of two shillings imposed on each hogshead of tobacco exported from the Colony. Moreover, by a second

<sup>1</sup> The castle duties were at a later date restored to Morryson, to whom they really belonged as captain of the fort at Point Comfort (see Hening's *Statutes*, vol. ii., p. 9), but Berkeley received, by way of composition for their loss, sixty thousand pounds of tobacco.

<sup>2</sup> In 1660, every inn-keeper, before he could obtain a license to retail liquor, was required to give bond that he would pay annually 350 lbs. of tobacco for the use of the Governor; Hening's *Statutes*, vol. ii., p. 19. Campbell estimated the income of this officer at this time at \$12,000, but it was probably nearer \$20,000, if we consider simply its purchasing power. See Campbell's *History of Va.*, p. 253. Later on, it fell little short of \$40,000.



Act, he was entitled to be paid one bushel of corn by every tithable residing in Virginia; and two persons were specially appointed in each parish to see that this grain was delivered at some place from which it would be convenient to transport it by vessel.<sup>1</sup>

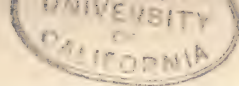
Berkeley seems to have possessed an unusual power of influencing the Privy Council as well as the General Assembly to increase the rewards for his personal services, a fact probably due both to his undoubted sacrifices for the royal cause when its prospects were most overclouded, and to his extravagant, though sincere, expressions of loyalty and fidelity to the King after the Restoration. The former body, in 1661, granted him for his own personal use the sum of two thousand pounds sterling from the total amount of duties and customs payable by the first ships which should arrive in England with cargoes of tobacco from Virginia. This valuable gift of money was made (so the Privy Council declared) not only in recognition of his meritorious conduct as Governor of the Colony, but also as a complete acquittance of all the unfulfilled engagements which either Charles I or Charles II had undertaken to perform in his behalf.<sup>2</sup>

In the course of 1662, the Council for Foreign Plantations ordered that the annual salary of one thousand pounds sterling, formerly paid to the Governor, should be renewed; but it does not seem to be quite clear whether it was to be collected out of the English customs and duties, or, as previously, by a levy on the different tithables residing in the Colony. The latter appears to be the correct view,<sup>3</sup> for, as we have seen, the

<sup>1</sup> Hening's *Statutes*, vol. i., p. 546; vol. ii., p. 10.

<sup>2</sup> See Warrant Sept. 12, 1661, Dom. Chas. II.

<sup>3</sup> Proceedings of Council for Foreign Plantations, Aug. 11, 1662,



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counties, after this year, continued to contribute large sums for the Governor's support. The assessment in Lancaster county for October, 1665, contained one item in Berkeley's favor amounting to over thirty-five thousand pounds of tobacco; in 1666, to twenty-five thousand; in 1668, to eighteen thousand; in 1670, to fifty-five hundred; and in 1671, to twenty-five hundred. The records for other counties reveal the levying of equally large sums from year to year. Although the Governor's salary was fixed at one thousand pounds sterling annually, it was always calculated in pounds of tobacco, and collected in that form. The General Assembly, in 1674, added two hundred pounds sterling to the amount Berkeley was legally entitled to receive; but this was designed as a reward for special services; and the Act expressly disclaimed the intention of establishing a precedent for his successors.<sup>1</sup>

Berkeley and the Governors chosen during the period of the Commonwealth had become citizens of Virginia either by permanent settlement or by prolonged resi-

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British Colonial Papers, vol. xiv. "It being put to the question whether the Colony of Virginia should bear its own charge and no longer be burdensome to the Crown, &c., this Council is of the opinion it should bear its own charge and do humbly advise his Majesty to recommend the Colony the paying and raising a revenue for that purpose"; see Proceedings, British Colonial Papers, vol. xiv., No. 59.

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 314. Berkeley was reported as saying of Col. Jeffreys, his successor: "Col. Jeffreys should have his £100 per month from his first coming into the country, and for the time he stayed . . . And further," he added, "that at ye year's end (the place was so expensefull) Col. Jeffreys would find his hundred pounds a month would not give himself his bread." And when Col. Jeffreys asked of Sir William how he should come to his salary of a hundred pounds a month after Sir William was gone, the latter sharply replied: "Before God, you must look to that as I have done." See British Colonial Papers, vol. xliii., No. 143.

dence there, and as such were thoroughly in touch with its various interests. Culpeper, although at first appointed to the office for the term of his natural life, was never really identified with these interests, and, like Howard, looked upon his incumbency as a means of enriching himself by every device in his reach. His patent required that he should be paid at least one thousand pounds sterling each year; and in addition to this, he received the grant (which had been enjoyed by his predecessors, and was to pass to his successors also) of a general tax of twenty shillings on every vessel arriving in the Colony. Culpeper persuaded the King to increase the salary of his post to two thousand pounds sterling annually, a sum equal in purchasing power to fifty thousand dollars in our present currency, an enormous remuneration for the services of a provincial official. This remained the permanent salary of the Governors; and it was swelled by the allowance of one hundred and fifty pounds sterling for house rent, as well as by occasional special gifts from the Assembly; for instance, this body granted Culpeper a sum of five hundred pounds sterling, and Nicholson three hundred, as an evidence of its appreciation of certain services they had respectively performed. The remuneration received by the Governors after Culpeper's appointment was assured by appropriations out of the fund accumulated from the tax of two shillings on each exported hogshead as well as from the duties paid by the ships trading with the Colony. The salary was disbursed quarterly, and constituted the first lien on the moneys lying in the treasury at the time it fell due.<sup>1</sup>

<sup>1</sup> Robinson Transcripts, p. 178; Colonial Entry Book, 1689-95, p. 93; B. T. Va., 1691, Nos. 16, 25, 29; also vol. vii., p. 118; *Present State of Virginia*, 1697-8, Section iv. Beverley declared with some



The tribute in the form of beaver skins received annually from the Indians was valued at fifty pounds sterling; and during Howard's incumbency, these furs were considered to be a perquisite of his office.<sup>1</sup>

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feeling that Culpeper's request for an increased salary was favorably received because he was a peer; *History of Virginia*, p. 188. One of the instructions to the Governor of Virginia about 1682 was to the following effect: "All Acts for raising money for a Governor shall say the money is to be given or granted to his Majesty with humble desires that ye same may be applyed to ye use of such Governor, etc."; Colonial Entry Book, 1681-5, p. 93.

<sup>1</sup> Colonial Entry Book, 1680-95, p. 224.

## CHAPTER XII

### The Governor: State and Dignity

AS the representative of the King and as the chief executive and judicial officer of the Colony, the Governor was hedged about with a great deal of state. Almost from the foundation of the Colony, he was allowed a considerable body guard; as early as 1623, for instance, the number of soldiers in immediate attendance on Wyatt was thirty, a special corps granted by the General Assembly and paid for out of the public levy.<sup>1</sup> The body guard in 1643 perhaps contained the same number of men<sup>2</sup>; but by 1648, it had been reduced to ten, who had been carefully selected for their physical strength. The reason given for this discrimination in choosing them was that the Governor's life was in constant danger both from the Indians visiting him under pretence of entering into formal treaties, and from persons whose sympathy with the Parliamentarians in England had thrown them into a state of violent disaffection towards the Colonial officers.<sup>3</sup>

During the existence of the Protectorate, the Governor apparently was unattended by a body guard, for

<sup>1</sup> Wyatt to Ferrer, British Colonial Papers, vol. ii., No. 26. William Pierce was the captain of the guard at this time; see Randolph MS., vol. iii., p. 175.

<sup>2</sup> Robinson Transcripts, p. 238.

<sup>3</sup> Hening's *Statutes*, vol. i., p. 355.

as soon as Berkeley was restored to his old position, the Assembly declared it to be urgently necessary that such a guard should be created for his honor and protection. The Act passed in consequence provided that twenty men should compose his escort; and that he should enjoy the privilege of nominating the officer to be placed in command of it. This little force was to be subject in general to the orders of Berkeley alone; and was to support him on all public occasions, especially during the sessions of the General Court and the General Assembly. The only reservation in granting him complete control over it was that, while the House of Burgesses was sitting, one half of the corps was to serve as a guard for that body under an officer whom it would itself designate. The commander of the whole corps received a salary of five thousand pounds of tobacco annually; and each soldier two thousand pounds.<sup>1</sup> In 1674, the Governor's escort was increased in number to twenty-four men; and Berkeley was allowed twenty-four thousand pounds of tobacco out of the public levy for their accommodation at Green Spring.<sup>2</sup>

All the Governors, as was natural, were very jealous of maintaining the dignity of their office. When James Read, the blacksmith, struck President Ratcliffe, he was arrested at once and promptly sentenced to be hanged, on the theory probably that he had been guilty of treason in laying hands on the King's representative, although that representative had inflicted the first blow, and Read was really acting in self-defence. He was able to save his life only by revealing

<sup>1</sup> Randolph MS., vol. iii., p. 283. The commanding officer could only be sued with the leave of the Governor: *Va. Maga. of Hist. and Biog.*, vol. ix., p. 187.

<sup>2</sup> Orders of Assembly, March, 1674-5, Colonial Entry Book, vol. lxxxvi.



a plot hatched by Captain Kendall; and the latter, in consequence, was led out and shot to death.<sup>1</sup> Daniel Cugley, for uttering abusive words against the Governor and Council in 1630, was ordered to be committed to the pillory, but was pardoned, no doubt in consideration of his haste to offer an apology.<sup>2</sup> Thirty-two years later, George Harwood was compelled to kneel in court and implore forgiveness for using disrespectful language about Deputy-Governor Morryson<sup>3</sup>; and perhaps a severer judgment still was, in 1668, imposed on one of the justices of the peace who had been found guilty of the like offence.<sup>4</sup> When, in 1673, Benjamin Eggleston was convicted of having spoken "presumptuously and impudently" of the prerogative, and contemptuously of the Governor's authority, he was sentenced to be publicly whipped at Jamestown, unless he consented to pay three thousand pounds of tobacco, to be spent in the purchase of arms for the Colony.<sup>5</sup> Only three years later, John Watts and John Hanning, of Accomac, were arrested for referring in a derogatory manner to the Governor, and kept in custody until they had given satisfactory bond to appear in the General Court at Jamestown to answer for their slanderous words.<sup>6</sup> So sacred was the dignity of the mere office considered to be that not even Berkeley after he had left Virginia under a cloud of odium, and had fallen into a state of neglect and impotence, was allowed to be made the target of evil tongues; in 1677, John Sandford, of Lower Norfolk county, was accused of reflecting on the reputation of

<sup>1</sup> Brown's *First Republic*, p. 53.

<sup>2</sup> Randolph MS., vol. iii., p. 215.

<sup>3</sup> Campbell's *History of Virginia*, p. 257.

<sup>4</sup> Robinson Transcripts, p. 256.

<sup>5</sup> General Court Records, vol. 1670-76, p. 155.

<sup>6</sup> Accomac County Records, vol. 1676-78, p. 16.

the unhappy old man, and he was not suffered to depart from the Colony, which he designed doing at the time, until he had answered to the General Court for his scandalous attack.<sup>1</sup> The House of Burgesses itself seems to have taken the chief part in such prosecutions when the person guilty of the offence was a member of that body. An order was presented by the Assembly to the Governor in 1699 requesting him to instruct the Attorney-General to enter a criminal action against Major Thomas Godwin and Andrew Ross for defamatory and abusive words touching himself. Both of these men were probably members of the House, and perhaps had made the objectionable speeches in its chamber during the course of a sitting.<sup>2</sup>

Actual mutiny against the Governor, or words tending to incite open sedition, were punished with even greater severity because calculated to disturb the peace of the community. Captain Kendall, as we have seen, was deliberately put to death on the testimony of a single witness for a supposed plot against the authorities. The martial code enforced by Dale was equally stern and summary in the penalty it imposed for the same offence. But the most remarkable case of mutiny recorded in these early times was that which led to Harvey's deposition. According to Harvey himself, it had its origin in the false rumor that he was only awaiting a safe opportunity to betray the fort at Point Comfort into the hands of the Roman Catholics, who had recently made a settlement in Maryland.<sup>3</sup> The real cause, however, as stated by Samuel Mathews, lay in the popular opposition to Harvey's countenancing the division of the Colony; to his imposing, on his own

<sup>1</sup> Lower Norfolk County Records, Orders Aug. 16, 1677.

<sup>2</sup> Minutes of Council June 5, 1699, B. T. Va., vol. lii.

<sup>3</sup> British Colonial Papers, vol. viii., No. 73.

responsibility, oppressive taxes; and to his usurping various powers regardless of the advice and disapproval of the Council, to whose consideration this body claimed he was bound by law to submit all his designs and plans. It would appear also that his personal bearing, especially while presiding in the General Court, had given just ground for umbrage to his associates.<sup>1</sup> There were charges and countercharges of disloyalty. Menefie accused Harvey to his face of intentionally neglecting to send to the King information of the Assembly's positive refusal to accept the royal offer for the entire tobacco crop of the Colony. At this charge, Harvey rose in great excitement from his seat. "I arrest you," he cried out to his assailant, "for the crime of treason." Captains Utie and Mathews seized the indignant Governor by the shoulder and held him down in his chair. "We arrest you," they exclaimed, "on suspicion of treason to his Majesty." Dr. Pott, stepping to the window, waved his hand, and straightway forty musketeers marched up to the door of the Governor's house where the Council was sitting.

So much were the passions of the people aroused by the news of this stormy scene that Kemp urged Harvey to leave the Colony at once, in order to escape violence to his person; and that there was really a constant danger that he would be assaulted was shown by the precaution which the Council itself took in providing him with a guard for his protection. The four men chiefly responsible for Harvey's forcible removal from office were John West, who succeeded him at once in the post of Governor: Samuel Mathews, who had also given offence by opposing the royal offer for the Colony's

<sup>1</sup> See Mathews's Letter to Wolstoneholme, May 25, 1635, British Colonial Papers, vol. viii., No. 65.



annual crop of tobacco, and by defiantly asserting, when it was proposed to limit the amount of that crop, that the King himself could not prevent him from producing as much of this commodity as he chose on his own land; Captain William Pierce, who had brought a company of musketeers to Jamestown in anticipation of trouble with the Governor, and had promptly used this military force at the critical moment; and finally George Menefie, who had demanded and received of Harvey his Commission and Instructions as soon as he was declared to be deposed.<sup>1</sup>

The greatest insurrection which occurred in Virginia during the whole Colonial period was that of 1676, led by the younger Nathaniel Bacon, but it was not directed exclusively, like the mutiny of 1635, against the Governor. It was brought about by abuses for which the vestries and the General Assembly were as responsible as Berkeley himself, although it is not probable that the action of these bodies would have been so extreme had not the Governor's influence been thrown into the same scale to the encouragement of all who were selfish in spirit and unscrupulous in conduct, especially as related to political affairs.

<sup>1</sup> British Colonial Papers, vol. viii., Nos. 61, 85.

## CHAPTER XIII

### The Council: Its Membership

**A**MONGST the foremost men residing in the Colony during the Seventeenth century were the members of the Governor's Council; who, from the earliest to the latest decade, were invariably chosen from the body of the wealthiest, most capable, and most influential citizens of Virginia. It was expressly enjoined in the instructions received by the Governors from time to time that no one should be appointed Councillor known to be lacking in estate and in ability. In giving Howard directions as to the character and condition of the persons whom he should nominate to seats at the board, he was, with great particularity, warned to avoid making choice of "necessitous people, or people much in debt."<sup>1</sup> It reveals how strictly the prerequisite that each member of the Council should own a large amount of property was enforced that Nicholson, although, in 1691, very anxious to appoint Colonel Thomas Milner, a man who had, with distinction, occupied the honorable and responsible post of Speaker of the House of Burgesses, nevertheless was prevented from recommending him by the fact that he was not in possession of sufficient estate.<sup>2</sup> This dis-

<sup>1</sup> Instructions to Howard, Colonial Entry Book, 1685-90, p. 23.

<sup>2</sup> B. T. Va., 1691; see Nicholson's Letter dated June 10, 1691, No. 41.

crimination did not have its origin in such a purely sentimental cause as the desire to maintain the extraordinary dignity of the office by choosing to fill it only men enjoying the highest consideration in the community; the care in selecting members of the Board among persons of property was attributable to the very practical fact that the Councillor served both as naval officer and as collector of customs for the district in which he resided; that as such he had the custody of very large sums of money; and that unless he owned a competent estate, any default on his part would entail a permanent loss to the Colony. Should he, however, possess a large property, any deficit in his accounts could soon be covered by its sale.<sup>1</sup>

Wealthy and prominent both socially and politically as the citizen must be to become a member of the Council, his nomination to that office at once greatly enhanced his importance in the community. This fact was not reflected merely in an increase in personal dignity; appointment to the Board was one of the surest means existing in the Colony of trebling and quadrupling a fortune, owing to the large salaries of the numerous very lucrative offices that went with it. Nor did the performance of the duties incident to these offices interfere in the slightest degree with the incumbent's accumulating property by engaging at the same time in the calling of a planter and the business of a trader in tobacco and merchandise, the only avenues open to the average citizen by which he could add to his estate. What were these offices? Firstly, when the Governor and Lieutenant or Deputy-Governor were absent from Virginia, the President of the Council became the acting chief magistrate of the Colony at an annual

<sup>1</sup> B. T. Va. 1699, vol. vii., p. 150.



remuneration of five hundred pounds sterling; secondly, the entire number of Councillors constituted the Upper House of the General Assembly, and in the various powers exercised by them in that character closely resembled the English House of Lords; thirdly, in association with the Governor, they formed the General Court, which concentrated in itself the several jurisdictions of the Chancery, King's Bench, Common Pleas, Exchequer, Admiralty and Ecclesiastical Courts of England; fourthly, they served as commanders-in-chief or colonels of their respective groups of counties, and as such possessed privileges closely analogous to those of the English Lords-Lieutenant; fifthly, they acted as naval officers, and in that capacity were called on to enforce all laws passed by Parliament and the General Assembly for the advancement of trade and navigation, and as naval officers, they also entered and cleared all vessels; sixthly, they were the collectors of the export duty of two shillings a hogshead, and of all other duties of the like nature, such, for instance, as the one penny a pound imposed on tobacco shipped from Virginia to another English colony in America; seventhly, they were the farmers of the quitrents, which they obtained from the Auditor on very low bids; eighthly, they acted as escheators, an office very lucrative in itself and offering unusual opportunities for profitable investment; and finally, such exalted positions as those of Secretary and Auditor of the Colony were always filled by men drawn from the circle of the Governor's Council.

It is not going too far to say that the members of the Council appropriated to themselves all those higher offices of the Colony which were attended with the largest salaries, or presented the most numerous chances for money-getting. They deliberately dis-

regarded the fact that the concentration of these offices in so few hands brought about serious damage to the public interests whenever the Councillor was required by his incumbency of two separate positions to perform two sets of duties really in conflict with each other; a Councillor, for instance, was called upon to pass upon the correctness of his own accounts as collector; as collector, he was obliged, for his own enlightenment as a judge of the General Court, to inform himself of all violations of the Navigation Acts; as farmer of the quitrents, he practically owed the success of his bid to himself as Councillor; as escheator, who was a ministerial officer, he took and returned the inquisitions of escheats to himself as a judicial officer, and as such, passed upon points of law coming up in his own inquisitions.<sup>1</sup>

It is no cause for surprise that such a concentration of offices, necessarily so discouraging to a thoroughly conscientious discharge of public duties, should, in the long run, have resulted in many serious abuses. In his "Declaration of the People," one of the noblest of all American public papers, which deserves to have a far greater reputation than it enjoys, Bacon singled the Councillors out as "wicked and pernicious aiders and assisters against the commonalty"<sup>2</sup>; and he denounced them as "sponges to suck up the public treasury," as a "powerful cabal" full of wiles for their own enrichment, and as traitors to the people in their greedy determination to appropriate to themselves all the official fat of the unhappy Colony.<sup>3</sup> Two decades later, the younger Benjamin Harrison reflected upon

<sup>1</sup> *Present State of Virginia, 1697-8*, Section on Councillors.

<sup>2</sup> *British Colonial Papers*, vol. xxxvii., Doct. 41.

<sup>3</sup> *Ibid.*, Docts. 41, 51.

members of the Council in almost the same terms:—"The course of affairs," he wrote to the Council of Trade in July, 1698, "has been so long in the same channel that it now looks like justice it should continue so; and it is almost become criminal to argue against it, for whilst ill men find their advantages by such constitutions and the illegal and abusive practices thereof, those who would endeavor to make any reformation shall never fail to be branded as persons of turbulent spirits, stubborn and disloyal hearts, treacherous and wicked inclinations, and not only so, shall meet with all opposition imaginable, rage, and violence of those who think themselves losers by the alteration." And he concluded by asserting that the "Councillors would always have so great a regard to their own interests that they would not fail to stand by each other in opposition to all persons whatsoever."<sup>1</sup>

It was natural enough that the man possessing the right to fill so lucrative a position temporarily in case of a sudden vacancy, and whose recommendation was practically conclusive with the English authorities when the permanent appointment was to be made, should have exercised a paramount influence over the members of his Council. They were not only, from an official point of view, created by his favor, but also, in their tenure, entirely dependent upon the continuation of his good-will. Henry Hartwell, in replying to the queries put to him, in 1697, by the Committee of Trade and Plantations, remarked that his own observa-

<sup>1</sup> Benjamin Harrison, Jr., to Commissioners of Plantations, B. T. Va., Entry Book, vol. xxxvii., pp. 235, 303. Harrison was, no doubt, very much embittered against the Council. He had been accused of going off to Scotland in his ship without first obtaining clearance papers, and there selling the vessel under a false name.



tion had shown him that "the fact that the Councillors held their places by the Governor's gift, and during his pleasure, restrained them from the due freedom of counsel and debate"<sup>1</sup>; whilst the authors of the memorable pamphlet *The Present State of Virginia, 1697-8*, one of whom was Hartwell himself, declared that the same officers "were ready instruments to advise or execute, not only what the Governor expressly desired, but whatever they can imagine will serve and please him." It followed, so the same writers asseverated, that the whole power of the Council was as thoroughly at his command as if it had been directly invested in him by the King; and that he was as free to give such orders as he saw fit, just as if no such body was in existence. If, however, any policy adopted by him caused displeasure to the English authorities, he was always at liberty to shield himself from the consequences by gravely affirming that he was acting under the Board's advice; and the same subterfuge was open to him in case he had incurred the odium of the colonists by his course.

There is reason to think that these general reflections upon the bearing of the Council towards the Governor were not devoid of truth, although some allowance must be made for the influence of envy and jealousy on the minds of the witnesses, however reputable. The members of that body were human after all, and it was a peculiarly sordid and grasping age. In a Colony resembling Virginia during the Seventeenth century, where the chief thoughts and energies of the people were directed towards the conquest of nature and the improvement of their condition amid their primeval

<sup>1</sup> B. T. Va., 1697, vol. vi., p. 143.

surroundings, it was to be expected that the accumulation of property would have appeared the most important of all tasks, as it was doubtless the most interesting in which the citizen could engage. The Councillor's position offered, as we have already seen, exceptional opportunities for an increase of income. That the first men in the Colony should have been eager to secure it for that reason, and that having once obtained it, they should have displayed some subserviency in order to keep it, were facts that might have been easily predicted and which we hardly require any contemporary testimony to assure us of. Nevertheless, there is no proof that, as a body, the Councillors were on all occasions prepared to sacrifice their sense of public duty and their convictions as to what was right in itself for the mere purpose of standing in well with a Governor bent upon defying public sentiment and overriding justice in the pursuit of his own objects.

We have already seen how firm was the opposition which the whole Board raised to Harvey's selfish and unlawful conduct. Whilst the greater number of the Council supported Berkeley in those measures which were among the chief causes of the Insurrection of 1676, nevertheless one probable member of that body, the elder William Byrd, exhibited so much sympathy with Bacon's proposed reforms that he was subsequently denounced as a "notorious offender" by the more politic of his associates.<sup>1</sup> The Commissioners who undertook to settle the affairs of Virginia after the collapse of the Rebellion had, on more than one occasion, reason to

<sup>1</sup> Colonial Entry Book, 1676-81, p. 265. Byrd arrived in Virginia in 1674 when only twenty-two years of age. If a member of the Council at this early age, it was through the influence of family connections in the Colony.

describe some members of the Council as "rash and fiery."<sup>1</sup> Nor was it a certain sign of a supple spirit that so many of the same body retained the office for so great a length of time. Prolonged experience only made them more indispensable to successive Governors in administering the Colony's affairs, and their presence at the board assured for these Governors a higher degree of the public confidence. Of the members of the Council sitting in 1697, Ralph Wormeley and Richard Lee had occupied the position during twenty-one years, William Byrd during fifteen, Christopher Wormeley during thirteen, and Edward Hill during eight.<sup>2</sup> At least one of these distinguished citizens had shown that he did not value the large income resulting from his tenure so much that he was ready, in order to keep it, to trample upon the dictates of his conscience without scruple. When Parliament, after the Revolution of 1688, substituted a new oath for the former oaths of allegiance and supremacy, and required all persons holding office to subscribe to it, Richard Lee, as a member of the Council of Virginia, declined to take it, on the ground that he could not do so without violating his principles. Nor was he the only one to assume this attitude so injurious to his pecuniary interest; both Isaac Allerton and John Armistead exhibited a like spirit of independence and superiority to personal gain on the same occasion.<sup>3</sup>

Who was eligible to become a Councillor? In the Act of Parliament adopted to prevent frauds in the Plantation Trade, it was declared that only "native-born subjects of England and Ireland" would be

<sup>1</sup> Colonial Entry Book, 1676-81, p. 210.

<sup>2</sup> B. T. Va., vol. vi., p. 143.

<sup>3</sup> Orders of Council, April 21, 1691, Colonial Entry Book, 1680-95.



permitted to hold places of trust in courts of law. As every member of the Council in Virginia was also, by reason of his office, a member of the General Court, the question arose when Commissary Blair was nominated to the Council whether all natives of Scotland were not incapable of being advanced to a seat at that board. The question was finally referred to the English Attorney-General, who gave the opinion that Blair was eligible because he was constructively a "native-born subject of England"<sup>1</sup>; and he was, in consequence, sworn in. An Act of Assembly, passed in 1677, provided that no one should be appointed to any office in the Colony who had not resided there at least three years; but it was expressly affirmed that this law did not apply to a person who had received his commission from the King.<sup>2</sup>

The number of members belonging to the Council of 1607 was limited to seven,<sup>3</sup> but the smallest number constituting that body at any later period never seems to have fallen below nine. The authors of the *Present State of Virginia, 1697-8* asserted that, towards the last decade of the century, the Governors deliberately adopted the policy of restricting the membership to this figure as offering the greater assurance that they would be surrounded at the board by a subservient circle of advisers.<sup>4</sup> As long as there were only nine, they could be rewarded without difficulty, as there were just about that number of very lucrative offices to be distributed among them.

<sup>1</sup> B. T. Va., vol. vi., p. 297.

<sup>2</sup> Colonial Entry Book, 1676-81, p. 161.

<sup>3</sup> *Works of Captain John Smith*, vol. i., p. 151, Richmond edition.

<sup>4</sup> See also Minutes of Council, April 21, 1691, B. T. Va., 1691, No. 27.

Had anyone been left out in the division, his loyalty to the Governor could not have been counted on with certainty, nor even his willingness to hold the position long, as its tenure entailed considerable expense. It was, however, found even by the Council itself that the restriction of their number to nine gave rise to serious inconvenience, and, in 1691-2, that body took the initiative in petitioning the King to add to their membership. The reason for their making this request lay in the fact that, from time to time, the attendance at their meetings was much curtailed by the sickness of individual Councillors, or by their inability to be present owing to the accumulation of ice in the streams in winter, and the prevalence of high winds on the broader reaches of water in both winter and summer.<sup>1</sup> No doubt, in consequence of such representations, the membership had, by 1700, been increased to seventeen, after a preliminary enlargement to twelve.<sup>2</sup>

<sup>1</sup> Orders of Council, Jan'y 28, 1691-2, Colonial Entry Book, 1680-95.

<sup>2</sup> B. T. Va., 1700, vol. viii., Doct. 29; B. T. Va., 1699, vol. vii., p. 114.

## CHAPTER XIV

### The Council: How Appointed

THE members of the first Council assembling in the Colony were nominated either by the King or by the Council of Thirteen resident in England, who, under the provisions of the charter of 1606, were entrusted with the principal supervision of affairs in Virginia. When the first expedition was about to set sail from London, the names of the members of the Council to be established oversea were inserted in a box, with orders that it was not to be unlocked until the ships had reached their destination.<sup>1</sup> So soon as a landing had been made at Cape Henry, the box was opened, and it was found that Bartholomew Gosnold, Edward Maria Wingfield, Christopher Newport, John Smith, John Ratcliffe, John Martin, and George Kendall had been designated as the first Councillors, but they did not take the oath of office until they had disembarked at the future Jamestown.<sup>2</sup>

When the ordinances and constitutions of 1619 and 1620 were framed, it was provided therein that the members of the Council resident in Virginia should be chosen at the meeting of the quarter court held in

<sup>1</sup> *Works of Captain John Smith*, vol. i., p. 150, Richmond edition.

<sup>2</sup> See *ibid.*, p. 151, Richmond edition.



London; and this was to be done by an erection of hands unless, on any occasion, it was considered more advisable that a ballot should be taken.<sup>1</sup> A different rule seems to have prevailed immediately after the charter of 1609 was granted. By the terms of his commission, De la Warr was authorized to nominate as members of the Council such and so many persons, selected from amongst the inhabitants of Virginia, as he should decide to be best. After the revocation of the letters-patent in 1624, the power of appointment reverted to the Crown. Practically, this was purely nominal and theoretical, for, in reality, from the beginning of the period, the choice was made by the Governor, subject to the approval of the King or his representatives, namely, the Privy Council, and the Council for Trade and Plantations.

From an early period, as indispensable to the administration of the Colony's affairs, the Governor was instructed to fill any vacancy which might occur in the membership of the Board. Not long after his arrival at Jamestown, Gosnold, one of the original Councillors, died, and Kendall, a few months later, was executed for treasonable plotting. To one of the vacancies thus caused, Scrivener was admitted by direct appointment of the President, who, however, was acting with the consent and approval of the existing members. Governor Yeardley was, in 1626, expressly empowered to fill all vacancies which might arise.<sup>2</sup> When Harvey came over in 1629, he found only two Councillors surviving,

<sup>1</sup> Ordinances and Constitutions, 1619, 1620, p. 19; Force's *Hist. Tracts*, vol. iii.

<sup>2</sup> Instructions to Yeardley, 1626, Robinson Transcripts, p. 47; *Works of Captain John Smith*, vol. i., p. 166, Richmond edition.

and he proceeded to swear in six more at once.<sup>1</sup> By the terms of the commission granted to him in 1636, he was required to report to the English Government every case of death, resignation, or removal among the members of the Board<sup>2</sup>; and so small was the circle at this time, that only a prompt appointment in any one of these events prevented serious embarrassment to the public interests. The English authorities must now have conceded the right of temporary appointment as a political necessity, but at the same time, they renewed their order that the final appointment should come from England, though the name might be suggested, as it was as a matter of fact, by the Governor himself.<sup>3</sup> It was in this manner that Robert Evelyn, Christopher Wormeley, Richard Townsend, and John Sibsey were, about the same date, advanced to this office.<sup>4</sup>

During the period of the Commonwealth, all vacancies occurring in the Council were filled by the Assembly's appointment; and in exercising this right, that body was simply conforming to the terms of the agreement between Parliament and itself concluded at the time of the Surrender.<sup>5</sup> In 1656, Colonel Walker and the elder Nathaniel Bacon were chosen by the Governor and Council to unoccupied seats at the board, but with the

<sup>1</sup> British Colonial Papers, vol. v., No. 95 II.

<sup>2</sup> Patent Roll, 12 Charles I., Patent 20, No. 1.

<sup>3</sup> Hazard, vol. i., pp. 400-3.

<sup>4</sup> British Colonial Papers, vol. ix., 1636-8, No. 37. See Commission and Instructions of Wyatt, 1637-38-39, Domestic, Charles I., Docquet, Jan'y 8, 1637-8; also Colonial Entry Book, 1606-62, p. 216.

<sup>5</sup> Hening's *Statutes*, vol. i., p. 431. The exact words were: "The election to be until the next Assembly or until further pleasure of supreme power in England shall be known"; see also Hening's *Statutes*, vol. i., p. 358.

express reservation that their tenure was only to last until the General Assembly should hold its next meeting. It would seem that even this action was unusual, as the pressure of "emergent necessitie" was formally offered as its justification. This reason was carefully weighed by the House when it convened, and as it appeared to be well grounded, was accepted, and the temporary appointments were confirmed.<sup>1</sup>

One of the earliest acts of the English Government after the Restoration of the Stuarts was to issue an order to the Attorney-General to draw up a bill for the royal signature for Berkeley's reinstatement in his old position, with the right to fill all vacancies in his Council subject to the approval of the King. The same right was subsequently granted to both Culpeper and Howard.<sup>2</sup> When, in 1691, Richard Lee, Isaac Allerton, and John Armistead resigned from the Board, because unwilling to take the oath recently prescribed by Parliament, the Governor then in office proceeded to appoint their successors at once, although there were still eight Councillors remaining; but, at this time, it was considered detrimental to the public welfare for their number to fall below eleven or twelve.<sup>3</sup> The power to fill all vacancies in the Council was also bestowed on Nicholson when he received his commission as Governor at the close of the century; but he, like all his predecessors, had to report his nominations to the Privy Council or the Board of Trade for the royal approval.<sup>4</sup>

<sup>1</sup> Acts of 1656, Randolph MS., vol. iii., p. 267.

<sup>2</sup> See Warrant 1660, British Colonial Papers, vol. xiv.; Colonial Entry Book, vol. 1681-85, p. 14; vol. 1685-90, p. 4.

<sup>3</sup> It would seem that the Board had to be composed of at least nine members; see B. T. Va., 1691, No. 27; Beverley's *History of Virginia*, p. 189.

<sup>4</sup> B. T. Va., 1699, vol. vii., p. 114.



What power to suspend or remove a Councillor was possessed by the Governor? When Berkeley was first appointed, he was instructed to summon to the next session of the Council any member guilty of a breach of morality or a violation of the law. Not less than six of the whole number of Councillors were required to be present at such a meeting to deliberate upon all the details of the accusation; and a judgment was to be valid only if it were approved by a majority of voices. Should the Councillor on trial fail to be acquitted, he was to be either bailed or committed to prison, in either of which events, he lost his membership permanently or temporarily, according to the seriousness of his offence.<sup>1</sup> It was under such circumstances that Captain Henry Browne was suspended; and in a case of this kind, the Council seems to have sat as a General Court.<sup>2</sup> It would appear that this regulation remained in force until after the collapse of the Insurrection of 1676; not until then did the Governor acquire the right to remove or suspend according to his own discretion; the power was then given him because it was feared by the English Government lest the Council should, at some future time, become so deeply imbued with popular sympathies that it would not declare vacant the seat of a member known to be tainted even with treason; but as a check, the Governor was compelled to make a full report to the English authorities of all the reasons which had led him in any instance to suspend or remove a member of that body.<sup>3</sup> Howard, having been empowered by the terms of his commission to displace any

<sup>1</sup> Colonial Entry Book, 1606-62, p. 222.

<sup>2</sup> Robinson Transcripts, p. 235.

<sup>3</sup> Beverley's *History of Virginia*, p. 187; Nicholson's Commission, B. T. Va., 1699, vol. vii., p. 114.

Councillor whom he had just cause to look upon as hostile to the royal interests, expelled Philip Ludwell from the Board in the course of 1687; and his action when explained to the King was fully approved.<sup>1</sup> Absence from Virginia, without leave of the English Government, for a period of two years was considered to be a sufficient justification for declaring a Councillor's seat vacant. The instructions given to Nicholson in 1699 confirmed this regulation, but it would appear that a member was entitled to remain out of the country without loss of office provided that he had first secured the Governor's consent.<sup>2</sup>

By the terms of Howard's Instructions in 1685, a quorum of the Council could consist of three members, but it was only to be reduced to such a small number in case of an extraordinary emergency. Under the usual circumstances, the Governor was required to be supported by a quorum of at least five members. The like instructions were given to Andros.<sup>3</sup>

<sup>1</sup> Colonial Entry Book, 1685-90, p. 153.

<sup>2</sup> *Ibid.*, 1685-90, p. 23; B. T. Va., vol. vii., p. 115.

<sup>3</sup> *Ibid.*, 1685-90, p. 22; B. T. Va., 1691, Entry Book, vol. xxxvi., p. 121.

## CHAPTER XV

### The Council: Powers and Remuneration

THE Council possessed no power independently of the Governor when he was present in the Colony, or of his representative, the Lieutenant-Governor or Deputy-Governor, whenever he himself was absent. It may be asserted in a general way that the principal duty of this body consisted in advising the Governor in the matter of the various questions coming up in his administration of public affairs; and they were entitled to be consulted by him in every branch of public business presented to his consideration. A warm dispute arose during Harvey's incumbency as to whether the validity of the Governor's acts was not entirely dependent upon his having obtained beforehand the Board's consent and approval. It is difficult to say how far this contention was correct as relating to the same point at later periods. The Councillors perhaps took so extreme a position in Harvey's time under the influence of the instructions which Charles I. had given to the Governor and Council in March, 1624-5: "We grant unto you and the greater number of you respectively full power and authority to execute and perform the places, powers, and authorities of a Governor and Council of Virginia"; and only a few years later, the same King declared that "all his loving subjects" in



Virginia were to be governed by the same body as a whole, or by the greater number of its members, "in all things."<sup>1</sup> It seems clear from the royal words that, during the earlier part of the Seventeenth century, the Governor could not act regardless of the advice or approval of his Council; and it is probable that this was his legal position throughout the century, subject, however, with equal probability to the important modification that a mere majority of voices was not conclusive unless he voted in harmony with them; and that, on the other hand, his joining in the minority of voices did not make that minority override the majority.<sup>2</sup>

Apart from their right to advise and approve or disapprove of all the steps or measures proposed by the Governor, the only power independently of the judicial and legislative functions<sup>3</sup> which the Council possessed was one expressly delegated to its members in conjunction with the Governor by Act of Assembly. Such a power was the power to impose taxes within certain limits enjoyed by the Governor and Council at one time, although only for a very short period. They were, in 1631, pointedly forbidden to exercise such a power by their own authority, on the ground that it belonged to the House of Burgesses alone<sup>4</sup>; but at a later date, the right to lay a public levy not to exceed thirty pounds of tobacco a tithable was granted to them as a means of

<sup>1</sup> Robinson Transcripts, pp. 42-3; Randolph MS., vol. iii., p. 209.

<sup>2</sup> For powers of Council see Beverley's *History of Virginia*, and *Present State of Virginia*, 1697-8, by Hartwell, Chilton, and Blair.

<sup>3</sup> The functions of the Councillors as members *ex officio* of the General Court have already been detailed. Their functions as members *ex officio* of the Upper House of the General Assembly will be described in a later section.

<sup>4</sup> Hening's *Statutes*, vol. i., p. 171.

avoiding the expense of a special session of the Assembly, as such a session not infrequently made necessary an outlay equal to the whole cost of administering the Colony's affairs for the space of twelve months.<sup>1</sup> The exercise of this right by any public body besides themselves soon occasioned the House so much jealousy and suspicion, that, in a very short time, they withdrew it from the Governor and Council; who, in consequence, were led to petition the Committee of Trade and Plantations to restore it to them regardless of the disapproving attitude of the Assembly. They declared that they would be content to restrict their levy to twenty pounds of tobacco a tithable; and they also promised to account to the next House as to the manner in which the whole sum thus raised had been expended. They concluded by pointing out that the justices of the county courts had long enjoyed this right in assessing the county taxes.<sup>2</sup> This appeal to the English authorities seems to have been unsuccessful; and its only practical result apparently was to make the House of Burgesses more reluctant than ever to delegate so dangerous a power. In the course of 1686-7, that body firmly refused to allow the Governor and Council to lay a public levy of twenty pounds of tobacco a tithable.<sup>3</sup>

By an order of the Long Assembly, adopted in 1673, the Governor was authorized to distribute among the members of the Council the sum of fifty pounds sterling, which had been collected as a part of the fund derived from the tax of two shillings imposed on every hog-head of tobacco exported from the Colony. This seems

<sup>1</sup> British Colonial Papers, vol. 1., No. 69.

<sup>2</sup> Colonial Entry Book, 1681-5, p. 186.

<sup>3</sup> British Colonial Papers, vol. lix., No. 58.

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to have been designed as some return for their services as members of the Upper House and of the General Court, as well as of the Council.<sup>1</sup> Even the Assembly of 1676, which, under the influence of Bacon and his principal followers, reformed so many serious abuses, approved of this measure; that thoughtful and determined body of men went even further in the reward they allowed for these services, for, instead of fifty pounds sterling, they directed that one hundred pounds should be disbursed among the Councillors in proportion to their attendance; and in the course of the following year, two hundred and fifty pounds sterling were, by order of the General Assembly then sitting, added to this sum.<sup>2</sup> In a letter written by William Fitzhugh in 1687, he declared that each of the Councillors received in the form of salary between thirty and forty pounds sterling per annum payable by means of the export tax on tobacco.<sup>3</sup> In the next decade, three hundred and fifty pounds sterling were annually disbursed for their benefit, which ensured for each the same amount still.<sup>4</sup> We learn from Beverley that the distribution at the end of the century continued to be entirely in proportion to attendance,<sup>5</sup> for the theory was then, as it was twenty-five years earlier, that the payment was de-

<sup>1</sup> Acts of Assembly, 1673, Colonial Entry Book, vol. lxxxvi.

<sup>2</sup> Hening's *Statutes*, vol. ii., pp. 359, 392. The Assembly in 1676-7 directed the payment to the Councillors of £100 "over and above the £250 paid them." As will be seen in a later paragraph, there was a special reason for the Assembly's action, namely, its determination to deprive the Councillors of certain valuable exemptions, for which this increase of salary was supposed to be some compensation.

<sup>3</sup> Letters of William Fitzhugh, April 5, 1687.

<sup>4</sup> Minutes of Council, June 15, 1696; April 26, 1698, B. T. Va., vol. liii.

<sup>5</sup> Beverley's *History of Virginia*, p. 189.



signed simply to cover the Councillors' actual expenses during the performance of their duties as members of the Council, of the General Court, and of the Upper House.

If the Councillors had been compelled to rely upon their fixed salaries as their only remuneration for their services in these different capacities, they would have been but poorly rewarded for the trouble, expense, and loss of time which these combined offices made necessary. Their chief income was really derived from their percentage of the funds accumulating in their hands as the collectors of customs in their several districts. This income was so large that they were willing enough, in return for its acquisition, to perform almost gratuitously all the duties imposed upon them as members of the Council, of the General Court, and of the Upper House of the Assembly.<sup>1</sup> It was to be expected that, when, in 1698-9, the Governor of the Colony was instructed from England to forbid any Councillor to occupy the position of collector or naval officer, there would be an earnest protest from every member of the body. In a petition bearing upon the subject, presented by Richard Lee, Edward Hill, Edmund Jennings, and Charles Scarborough, every one of whom had, at one time, combined in his own person the offices of collector, naval officer, and receiver, it was urged that all these offices ought to be held by Councillors in order that they might obtain some compensation for "their care and trouble, and their great expense of time and money, loss and damage in their estates and hazards they undergo to serve the king"; and they declared further

<sup>1</sup> See Letter of Nicholson to Committee of Plantations, July, 699, B. T. Va., 1699, vol. vii.

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that, without the income from these offices, the Councilors would not have sufficient means, unless they drew it from their private estates, "to bear the expenses of their journeys to and from town, these being distant some one hundred miles, some seventy, none less than twelve, with rivers to cross."<sup>1</sup>

The statements made in this petition were far from being devoid of reasonableness. The members of the Council as judges of the General Court, as members of the Upper House, and also as Councillors, undertook duties of extraordinary weight and delicacy, which exacted a great expenditure of time and thought for their proper discharge, and which could only be performed at all by a periodical attendance at Jamestown, a step requiring a very considerable outlay to meet the costs of board and lodging during their stay there. Had the English Government persevered in its determination to deprive the members of the Council of the collectorships, the office of Councillor would have soon fallen into less responsible and less distinguished hands; and from having been the most eagerly desired position in the Colony, would have soon become one comparatively little sought after simply because it imposed a burden of personal expense which few, however rich, would have been willing to bear.

The direct remuneration allowed members of the Council was not limited to the particular sum of thirty or forty pounds a year granted to recoup them for their actual expenses in the performance of their different duties; they were, in addition, permitted to enjoy

<sup>1</sup> B. T. Va., vol. vii., p. 150. Nicholson writing in 1690 said: "Col. Lee and Col. Allerton live nigh 100 miles off. Col. Custis on ye Eastern Shore is often hindered by wind and weather. The rest live nigh 40 miles off"; B. T. Va., 1690, No. 6.

certain exemptions from taxation amounting to a very substantial advantage from a pecuniary point of view. As early as January, 1639-40, the General Assembly, in conformity with instructions given to Gov. Wyatt, relieved every Councillor of the burden of public charges touching himself and ten of his servants.<sup>1</sup> The instructions to Berkeley, a few years later, authorized the bestowal of the like extraordinary privilege, on the ground that the members of the Council were compelled to devote the greater part of their time to the public service to the neglect of their private affairs; but the exemption was to be suspended during the progress of a defensive war, or during the time the building of a town was under way; nor was it, under any circumstances, to apply to the regular dues of the Church and the clergymen.<sup>2</sup> That the order for the discontinuance of the privilege during a period when hostilities were going on was really enforced is shown by the General Assembly's action in 1644-5 (a year made memorable by Indian outrages all along the frontiers), in requiring each Councillor to pay the usual tax on every tithable in his employment so as to swell the fund for meeting all the charges imposed by the defensive measures then taken. In other words, he was compelled, like the great body of citizens, to contribute

<sup>1</sup> "Sir Francis Wyatt brought over instructions to free all his Council from paying all public charges. Captain Willoughby of this county coming in as one of the Council then with Sir Francis Wyatt, and having ten or more in number in his family, the levy being 60 lbs. of tobacco per poll was exempted for all"; Lower Norfolk County Orders, Jan'y 16, 1642; see also Robinson Transcripts, p. 227; Randolph MS., vol. iii., p. 231.

<sup>2</sup> Colonial Entry Book, 1606-62, p. 223; Hening's *Statutes*, vol. i., p. 279.



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in proportion to the number of persons in his service.<sup>1</sup>

This grant to the Councillors of exemption from the heaviest public charges must have appeared even to the mass of the colonists to be neither unreasonable nor improper, for in 1657-8, when Virginia was governed practically by the popular voice as represented in the House of Burgesses, we find it renewed in almost precisely the same language as had been used during the preceding period.<sup>2</sup> It is certain that the House would not have done this at a time when it was so responsive to popular influence had it not really felt that the Councillors were entitled to some unusual form of remuneration; and that, although this exemption from all public dues, except those for the support of the Church and its ministers, increased the burden of taxation already borne by the people at large, nevertheless this was not inequitable, owing to the very onerous, responsible, and expensive duties performed by these officials; and that, if the Colony was to secure for the position its most capable and trustworthy citizens, then some special reward must be offered them. It is quite probable that, from 1624 down to 1660, the income derived by members of the Council indirectly from their office (that is to say, from their appointment to the collectorships, escheatorships, and the like) was very much smaller than it was during the last quarter of the century, and it was, therefore, thought, during this interval at least, by all classes of citizens that some

<sup>1</sup> Hening's *Statutes*, vol. i., p. 307. The second great massacre took place in 1644. The levy for 1645 was undoubtedly in part at least designed to cover the expenses incurred in defence during the previous year.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 445.

special privilege should be bestowed on them as a return for the loss of time and expenditure of money incurred by them in attending to the public business. In 1660, when the system formerly prevailing in the Colony was again in operation, the Councillors were each allowed by Act of Assembly a sum of two thousand pounds of tobacco; but this law was soon repealed; without, however, depriving them of the very valuable exemption from public charges which they were still enjoying.<sup>1</sup> How tenaciously they were disposed to cling to this exemption was shown in 1663 by the persistence of several of them, who had been sojourning in England for a very considerable length of time, in claiming it. This conduct seems to have aroused so much indignation in the General Assembly that it adopted an order that, should a member of the Council not be an actual resident of the Colony, or should he absent himself for a period of one year or more, he should, like any other citizen, be required to report for taxation the full number of tithables in his service; and the specific reason given by the General Assembly for the passage of this Act was that the exemption from public charges had only been allowed in consideration of the Councillor's unremitting performance of all the duties incident to his position.<sup>2</sup>

In 1676, when the concentration of offices in the hands of the members of the Council had reached its

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 32.

<sup>2</sup> Acts of 1663, Colonial Entry Book, vol. lxxxvi. "Whereas Thomas Loving, High Sheriff of James City county, by petition requested the opinion of the House whether Colonel Higginson, having been so long absent out of the country, should enjoy the privilege of Councillor by exempting certain persons out of the levies, Resolved that, in respect of his long absence, he being in no public employment, shall not have any persons exempted."

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furthest point, the General Assembly, which met in that year and reformed so many abuses, expressly took away this right of exemption, but, as some compensation for its loss, increased, as we have seen, their collective salary from a total of fifty to a total of one hundred pounds sterling.<sup>1</sup> This Act was repealed so soon as Bacon's influence was destroyed by his death; but it is significant that the exemption was not restored, a course followed, no doubt, in deference to public sentiment, which had long regarded with peculiar disfavor the numerous privileges the Council had managed to combine in their own possession. In order to soften in some degree the Councillors' disappointment, the Assembly added two hundred and fifty pounds to their annual collective salary.<sup>2</sup> Apparently, the right of general relief from public taxation was never again granted to them.

The Councillors asserted that, during their incumbency of their honorable and responsible office, they were exempt from arrest by the usual process of law<sup>3</sup>; and it would seem that this claim was not entirely groundless. Hartwell, in his testimony before the Committee of Plantations, in 1697, declared that he knew no means by which a member of the Council could be brought into a county court to answer in the most ordinary cause instituted against him there. When a suit was entered against him in the General Court, a letter

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 359.

<sup>2</sup> *Ibid.*, vol. ii., p. 392. The whole amount paid them by the authority of this statute was £350. It is inferred that £250 was added by this Assembly, as the amount allowed by the previous Assembly was, as we have seen, only one hundred pounds sterling.

<sup>3</sup> This claim was put forth specifically in an order of Council passed in 1678; see B. T. Va., 1699, vol. vii., p. 59.



announcing the fact was addressed by the Secretary of State to the sheriff of the county where he resided; but should the Councillor fail to appear, then the suit was dropped.<sup>1</sup> In contradiction of this statement made by Hartwell, the Governor declared that, in all those circumstances in which a common writ was used in the private citizen's case, the summons was used in the Councillor's, and in obedience to it, he was required to attend with the same degree of promptness as if the regular writ had been issued; and that should he omit to do so, a judgment by default was entered against him. If this regulation was in practice merely nominal, as Hartwell asserted, it was not from any neglect on the part of the Governor and Council in renewing it whenever they deemed that step to be necessary. Such a renewal, for instance, occurred in March, 1698.<sup>2</sup> Nevertheless, there is reason to think that the Councillors sometimes took advantage of one excuse or another to evade responding to even a summons, an act which seems to confirm the general correctness of Hartwell's accusation. So serious had this indirect defiance of the law become that, when instructions were drawn up for Nicholson in 1698, he was enjoined to deprive the Councillors of the option (which they had been enjoying without any authority) of obeying or neglecting the summons from the Governor or the Secretary of State to appear in court just as they thought their interests demanded.

<sup>1</sup> B. T. Va., 1697, vol. vi., p. 146.

<sup>2</sup> B. T. Va., vol. vi., p. 156. An order of the General Court adopted March 27, 1698, expressly declared that a summons signed by the Governor or the Secretary of State should be in law as binding on the Councillor as the ordinary writ; B. T. Va., vol. vi., p. 167. If signed by the clerk of the General Court alone, it was deemed invalid.

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It was only during a meeting of the General Assembly that they were now allowed to disregard this writ should one be then issued; which, however, was not likely, as both the Governor and Secretary of State were aware of the regulation. If the summons was received at any other time, and not at once obeyed, then the Councillor was liable, like the citizens in general, to be brought into court by the ordinary process.<sup>1</sup>

The object of requiring the members of the Council to submit to the binding force of the summons, but not to that of the ordinary writ, unless the summons had been first disobeyed, was that, as the summons had to be signed by the Governor or Secretary of State, some discretion might be exercised as to the time when they should appear in court. Subjected to the ordinary writ, which could be issued at any hour by anyone wishing to institute a suit, the Councillors could not, from day to day, or month to month, know whether they would not be compelled to leave Jamestown to defend themselves in actions before county justices. Such a call might come at a moment when an important cause was on trial in the General Court, or the members of the Council were taking measures for the Colony's protection, under either of which circumstances the public interests would inevitably suffer. The principle involved in the regulation was unquestionably a wise one; and not the less so because it was occasionally abused, as seems to have been the case in spite of the Governor's denial.

It was considered to be almost as much of a crime to slander a member of the Council as to defame the Governor himself. By the provisions of Dale's Martial Code, the punishment for the first offence consisted of

<sup>1</sup> B. T. Va., 1699, vol. vii., p. 59.

three successive whippings; for the second, condemnation to the galleys at hard labor during three years; and for the third, a sentence of death.<sup>1</sup> In 1643, Thomas Parks, who had spoken in opprobrious terms of Argoll Yeardley, a Councillor, was arrested and imprisoned until he gave satisfactory security for his appearance at the next meeting of the General Court.<sup>2</sup> Other cases occurring at later periods were dealt with with equal promptness and severity. A like indication of the dignity of the Councillor's office was revealed by the regulation prevailing about 1621 which restricted the right to wear gold in their clothes to members of the Council and heads of Hundreds. No such distinctions, however, seem to have existed after the recall of the letters-patent of the London Company.<sup>3</sup>

<sup>1</sup> Divine and Martial Laws, p. 11, Force's *Hist. Tracts*, vol. iii.

<sup>2</sup> Northampton County Records, Orders Dec. 20, 1643.

<sup>3</sup> Instructions to Wyatt, 1621, Randolph MS., vol. iii., p. 161.



## CHAPTER XVI

### The Council: Officers and Place of Meeting

THE three principal officers of the Council were the President, the Clerk, and the Messenger. The person whose name was first mentioned in the list of Councillors as entered in their general commission or in the Instructions to the Governor, served as President of the body.<sup>1</sup> As a rule, the member who had sat at the board for the longest period enjoyed the distinction of having his name appear at the head. The clerkship was filled by some of the foremost men, whether regarded from a social or political point of view, residing in the Colony.<sup>2</sup> The office of messenger carried much less dignity, but as the salary attached to it amounted annually to twenty-five pounds sterling, and its duties were light and took up but little time, for they were chiefly those of an ordinary sergeant-at-arms, it was of sufficient importance to induce citizens of prominence to seek to be appointed to it. Whenever a package had to be sent some distance, and expedition was necessary, extra remuneration was bestowed on the messenger; such a case occurred in 1698 when documents from the English Government, received at Jamestown, but really designed for the Governors of

<sup>1</sup> Colonial Entry Book, 1680-95, p. 311.

<sup>2</sup> Minutes of Council, Dec. 12, 1698, B. T. Va., vol. liii.

Maryland and New York, had to be forwarded with unusual despatch. Colonel Chiles was allowed a special reward of fifteen pounds sterling for performing this service; and he probably also obtained an additional sum sufficient to reimburse him for the expenses entailed by the journey.<sup>1</sup> At a meeting of the Council held in October, 1698, warrants for as large an amount as ninety-three pounds sterling were issued in payment of the charges resulting from sending a number of messages to different places.<sup>2</sup>

During the Company's existence, the Council probably met in the Governor's official residence at Jamestown as soon as that structure was completed. After the Crown resumed the administration of the Colony's affairs, the Council for some years continued to meet in the Governor's house, whether it was his official or his private home. That the need of a special building in which the Council might convene grew more urgent as time passed, is shown by the instruction given to Berkeley when he first became Governor, to erect such a house as soon as it was practicable to do so; but it would appear that the English authorities had in mind fitting accommodations for the Councillors rather in their character as the General Court than in their character as the Council of State.<sup>3</sup> There is no evidence of any intention to provide a separate chamber for their use as Councillors alone.

Not every session of the Council was held at Jamestown. During Berkeley's long administration, it con-

<sup>1</sup> Minutes of Council, April 26, 1698, B. T. Va., vol. liii. In many cases of this kind special messengers were employed.

<sup>2</sup> *Ibid.*, Oct. 28, 1698, B. T. Va., vol. liii.

<sup>3</sup> Colonial Entry Book, 1606-62, p. 228. The order was "to build a house where the Council might meet for the dispatching of public affairs and hearing of causes."

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vened not infrequently in his residence at Green Spring.<sup>1</sup> In the course of 1683, it seems to have met sometimes at Green Spring, sometimes at Jamestown, and, on at least one occasion, at Nomini. The majority of its sessions, during 1685, were held in the large hall belonging to the home of William Sherwood at Jamestown; and for privacy and dignity this was found to be the most satisfactory place yet used for this purpose. By the terms of an agreement which that distinguished lawyer made with the House of Burgesses, he bound himself to furnish this hall in the most comfortable manner, and to supply light, heat, and attendance, in return for twenty-five pounds sterling payable annually out of the fund accumulated from the tax on liquors.<sup>2</sup> As the Governor and Council had consented to the conversion of the porch chamber in the new State-House into an office for the clerk of the Assembly on condition that the hall in Sherwood's house was reserved for their own use, it is probable that this porch chamber was the room originally designed as a place of meeting for the Council as well as for the General Court. On the sixth of November, 1691, the former body convened at the residence of the elder Nathaniel Bacon in York county; and one month later, at Tyndall's Point. There were only five members present at each of these meetings.<sup>3</sup> At this date, Lieut.-Governor Nicholson was filling the office of Governor; and as he was in the habit of visiting from time to time the different parts of the Colony, it

<sup>1</sup> It was here that, on one occasion, the English Commissioners, Morryson, Berry, and Jeffreys, found the Governor and Council in session; see Colonial Entry Book, 1676-77, p. 83.

<sup>2</sup> Minutes of Assembly, Oct. 8, 1685, Colonial Entry Book, 1682-95, pp. 308, 309.

<sup>3</sup> Minutes of Council, Nov. 6, Dec. 8, 1691, Colonial Entry Book, 1680-95.



is probable that, during his administration, the Council far more frequently than was usual came together at the country homes of its principal members. In the closing years of the century, the regular place of meeting was still Sherwood's residence at Jamestown; but if there was any special reason why a session should be held at any other place in the Colony, the Councillors are still found assembling there at the Governor's call; for instance, in 1700, when the trial of the pirates captured in Lynnhaven Bay was arranged to come off at Elizabeth City, the Council was ordered by Nicholson to convene there.<sup>1</sup>

<sup>1</sup> Minutes of Assembly, May 16, 1695, Colonial Entry Book, 1682-95; Nicholson's Letter dated May 28, 1700, B. T. Va., vol. viii., Doct. 16.

## CHAPTER XVII

### Secretary of State: Incumbents of the Office

ONE of the most important of all the offices established in the Colony during the Seventeenth century was the Secretaryship of State. This office, like that of the Councillor, could, in case it became vacant, be filled temporarily by the Governor on his own responsibility, but it was necessary that his nomination should be reported to the King for approval. In actual practice, all permanent appointments to the position were made by the King on the special recommendation of the Governor.<sup>1</sup>

The first person to occupy the Secretaryship was William Strachey, who reached Virginia in 1610 in company with Lord De la Warr.<sup>2</sup> At this time, the office was associated with that of Recorder. Strachey belonged to a very ancient and honorable family, and was a man of marked literary talent, as proven by his interesting work descriptive of the conditions prevailing in the Colony in these early years. He was succeeded by the celebrated John Rolfe, who also combined in himself the two offices of Secretary and

<sup>1</sup> B. T. Va., 1697, vol. vi., pp. 143-4. Though the Councillors and Secretary were officers of a colony, they were generally referred to as "Councillors of State" and "Secretary of State."

<sup>2</sup> A Briefe Declaration, p. 74, Colonial Records of Virginia, State Senate Doct. 1874, Extra.

Recorder. Pory, whose appointment occurred in 1618, occupied the post of Secretary only, and was the first man to perform exclusively the duties incident to the reconstituted office from this time until the end of the century.<sup>1</sup> He had won the degree of Master-of-Arts when a student at Caius College; had afterwards been elected to a seat in Parliament; and was a man of superior capacity and numerous accomplishments.<sup>2</sup> He was followed by Christopher Davison, the eldest son of William Davison, a distinguished Secretary of State during the reign of Elizabeth, a monarch who evinced extraordinary discernment in selecting her public servants. Davison remained in the position until 1624, the year when the Company's letters-patent were recalled; he then seems to have been succeeded, at least temporarily, by Edward Sharpless, who was compelled to submit to an ignominious punishment for secretly delivering to the English Commissioners, sent out to investigate the affairs of the Colony, copies of valuable papers, among which were communications that had passed between the Governor, Council, and House of Burgesses, on one side, and the Company, on the other. For this offence, he was arrested, set in the pillory, and condemned to lose both of his ears; but the latter part of the sentence was modified to the slight clipping of one ear alone.<sup>3</sup>

In March, 1625-6, William Claiborne, who was sprung from a family of high distinction long identified with the county of Westmoreland in England, and who, before

<sup>1</sup> "The first that was ever chosen and appointed by Commission from the Council and Company in England under their hands and seals"; see Brown's *First Republic*, p. 291.

<sup>2</sup> *William and Mary College Quart.*, vol. x., pp. 167-9.

<sup>3</sup> *British Colonial Papers*, vol. iii., No. 41.



the end of many years, was destined to play a conspicuous part in resisting the demands and orders of the authorities of Maryland, was appointed to the office of Secretary.<sup>1</sup> About ten years later, Richard Kemp, of a family equally well known in Suffolk, England, is found in possession of the same office, to which he had been elevated on the special recommendation of the Duke of Lenox and the Earl of Pembroke, a proof of his enjoyment of very extensive social and political influence in his native country.<sup>2</sup> In 1640, George Reade, a nephew of Sir Francis Windebanke, one of the English Secretaries of State, was nominated to the post; and he continued to hold it until 1642, when Kemp was, for the second time, installed. Kemp was a man of a contentious nature, and like so many of his contemporaries, of a greedy and grasping disposition. Reference has already been made to his discreditable connection with the outrageous sentence passed on Rev. Mr. Panton. About 1638, Jerome Hawley, recently appointed to the Treasurership of the Colony, declared that, before his arrival at Jamestown, Kemp "had gotten into his hand the despatch of all business," and so keenly did he resent Hawley's diversion to himself of the profits of the Treasurership, that he sought to irritate him by claiming precedence over him as the first Councillor in length of service, if not as Secretary of State; and for some time refused to sign any order which was to be signed also by Hawley, unless his name was to be written first. Certain fees derived by him from issuing public patents were declared by the royal instructions to belong to the Treasurer; this

<sup>1</sup> Robinson Transcripts, p. 43.

<sup>2</sup> See letter of Kemp to Charles I., Sept., 1634, British Colonial Papers, vol. viii., 1634-5, No. 31.

further increased Kemp's anger and animosity, and made him more resolute to "keep a distance," as he expressed it, between that official and himself.<sup>1</sup>

Richard Lee occupied the Secretaryship in the interval between 1646 and 1652, and was succeeded by William Claiborne, who thus received the appointment for the second time; but as he had served as a Commissioner of Parliament in 1651, when the Colony had been forced to submit to the English fleet, and was very closely identified with the local government during the Protectorate, he failed to obtain a new commission when the Stuarts were restored to the throne. Thomas Ludwell, always a loyal supporter of the royal cause, was promoted to the place in March, 1660-1, and continued to hold the office, apparently without interruption, until September, 1676, when he seems to have been re-appointed,<sup>2</sup> but only filled the position for a short time, as Daniel Parke soon became Secretary by the nomination of Governor Jeffreys. Parke was followed by Philip Ludwell; and Ludwell by Nicholas Spencer.<sup>3</sup> These three men were amongst the most conspicuous citizens of Virginia, whether considered from the point of view of influential family connections, large wealth, or important public services. Spencer died in 1689, and was succeeded by William Cole, who seems to have combined with the office the collectorship of the Lower

<sup>1</sup> See Hawley's letter dated May 17, 1638, British Colonial Papers, vol. ix., No. 110.

<sup>2</sup> Hening's *Statutes*, vol. ii., p. 39; Randolph MS., vol. iii., pp. 286, 356; Robinson Transcripts, p. 260.

<sup>3</sup> *Va. Maga. of Hist. and Biog.*, vol. ix., p. 187; Robinson Transcripts, p. 267; Henrico County Minute Book, 1682-1701, p. 39, Va. St. Libr.

District of James River.<sup>1</sup> After his resignation in 1692, the Governor filled the vacancy by the temporary appointment of Christopher Robinson, a citizen of Middlesex county, who had settled in the Colony many years before.<sup>2</sup> He died in the following year, and was succeeded by Ralph Wormeley, a man of great experience in public affairs, and the possessor of a large and valuable estate. When his health became precarious, he was allowed the assistance of a deputy, an unusual privilege, showing the high esteem in which he was held.<sup>3</sup>

It will be seen from this list of persons occupying the office of Secretary of State, during the Seventeenth century, that the incumbents were, without an exception, drawn from the circle of the most prominent citizens of the Colony; that they were men in the enjoyment of competent fortunes; that they belonged, as a rule, to families of great social and political influence; and that they were distinguished for superior talents and accomplishments, and generally for ripe experience in the public service.

<sup>1</sup> B. T. Va. Entry Book, vol. xxxvi., p. 9; Orders of Council, June 24, 1692, Colonial Entry Book, 1680-95.

<sup>2</sup> B. T. Va., 1692, No. 107, p. 113; Colonial Entry Book, vol. xxxvi., p. 204; *Va. Maga. of Hist. and Biog.*, vol. vii., p. 17.

<sup>3</sup> Edmund Jennings was appointed Deputy-Secretary in September, 1696; see B. T. Va. Entry Book, vol. xxxvi., p. 237; vol. xxxvii., p. 12.



## CHAPTER XVIII

### Secretary of State: Powers and Remuneration

WHAT were the special powers exercised by the Secretary of State, and what were the duties which he performed? During the early years of the Colony's history, the principal work required of him was to transcribe all the letters dispatched in the name of the Governor and Council, whether they were independent communications, or simply replies to communications received.<sup>1</sup> He was, in 1635, expressly authorized by an Act of Assembly to sign commissions and passports, and also discharges for ships, whenever the Governor happened to be absent from Virginia; and under the same circumstances, he was to be held responsible for the management of Indian affairs.<sup>2</sup>

At the time of the first nomination, it was intended that the Secretary should be the legal custodian of the Colony's seal. But in 1640, William Claiborne drew up a petition to the King, with apparently the General Court's approval, in which he begged that a special Keeper of the Seal should be appointed, as the present arrangement for its use occasioned serious and constant

<sup>1</sup> Instructions March 14, 1625-6, Robinson Transcripts, p. 43.

<sup>2</sup> Randolph MS., vol. iii., p. 225. There is an instance of a patent granted by the Secretary in the Governor's absence; see Lower Norfolk County Records, vol. 1651-56, p. 134.

inconvenience. This prayer seems to have been passed on favorably, for Claiborne obtained the new place, and was thus empowered to seal all patents, charters, grants, and the like, which were to be finally enrolled in his office after they had passed through the office of the Secretary. All petitions, answers, and interrogations were also to be filed with the Keeper, whilst in this office there were to be drafted all subpoenas, and all other writs that issued as out of Chancery.<sup>1</sup>

When this new office was proposed, it was declared that there was no intention of curtailing the profits or diminishing the duties incident to the Secretaryship. The duties belonging to that office were now defined as consisting of, first, transcribing all the letters dispatched by the Governor and Council, whether they were in the initiative, or merely in reply; secondly, drawing up and recording all public documents, such as patents, commissions, charters, freedoms, and extraordinary warrants requiring the Governor's signature or the stamp of the signet; thirdly, preparing the necessary passports for persons desiring to leave Virginia, whether for England, or the other Colonies; fourthly, making copies of licenses to trade, to hunt wild hogs, and to go aboard ships newly arrived; fifthly, drawing up probates of wills and administration papers, and recording wills, inventories, accounts, judgments in common law, orders of court, fines, licenses for marriages, and all things relating to the process of the Prerogative Court; and, finally, drafting a full report of the proceedings of the General Assembly.<sup>2</sup>

If the office of Keeper of the Seal was ever established in working order, it did not remain long in existence,

<sup>1</sup> Robinson Transcripts, p. 25.

<sup>2</sup> *Ibid.*

if for no other reason because it added sensibly to the burden of public taxation without being indispensable. The use of the Colony's seal continued to be an important part of the Secretary's work; and this, as well as the duties defined in the previous paragraph, were, for a long period, his chief official occupation. Owing to the smallness of the population and the simplicity of the economic interests, but above all, to the constant and urgent necessity for economy in the public expenditures, there were combined in the hands of the Secretary a variety of powers, which, in England, were distributed among several offices held by different persons. At the close of the century, these duties had not changed materially from what they were in 1640, as laid down by the General Assembly. The office continued to be in the main one of record, and most of its tasks were still wholly clerical. There were entered the proceedings of the General, Admiralty and Ecclesiastical Courts; the conveyances and letters-of-attorney drawn abroad and sent to Virginia; the surveys and lists of headrights forming the ground of patents to the public domain; the inquisitions taken in case of escheats and the grants of such lands; the accounts of the different probates of wills and administrations; certificates of births, marriages, and burials occurring in all parts of the Colony; certificates also of all fines and forfeitures; reports of coroners; the returns by the sheriffs of the lists of tithables; certificates of the admission and induction of clergymen; the freedom of ships; appeals from the county courts; and certificates of innkeepers' licenses and the like. From this office issued all civil and military commissions, all writs for choosing Burgesses, all original and judicial writs relating to proceedings in the General Court, all naturalization and denization papers,



and all passports granted to persons leaving the Colony. From this office also full reports of the General Assembly's proceedings, and copies of all new laws and orders were dispatched to England.<sup>1</sup>

The greater part of the business transacted in the office was transacted by a clerk, styled the Clerk of the General Court, who had the assistance of a number of under clerks. Theoretically, the Secretary himself was the chief clerk of the General Court, but instead of occupying that position in actual practice, he really sat on the bench as one of the judges.<sup>2</sup>

During the Company's rule, five hundred acres of land and twenty tenants for its cultivation, were assigned for the support of the office.<sup>3</sup> About 1620-1, the number of these tenants had been so greatly reduced by disease and other causes that it was found necessary to grant to the Secretary the right to charge fees until the deficiency could be made good by importing other tenants.<sup>4</sup> An Act of Assembly passed in 1631 authorized the incumbent of the post at that time to obtain a patent to six hundred acres of land situated as near to Jamestown as the area of country already taken up permitted.<sup>5</sup> A few years afterwards, Kemp complained, with some bitterness, that, since he had occupied the position, he had never enjoyed, as his predecessors had done, the proceeds from the labor of any agricultural servants attached to the office; that he had derived no benefit from the use or sale of any cattle; and that his only remuneration consisted of

<sup>1</sup> *Present State of Virginia*, 1697-8, Section viii.; Hening's *Statutes*, vol. i., p. 551. See also Hening's *Statutes*, vol. ii., p. 512; Colonial Entry Book, 1685-90, p. 30.

<sup>2</sup> Culpeper's Report, 1681; see Campbell's *History of Virginia*, p. 352.

<sup>3</sup> Randolph MS., vol. iii., p. 161. <sup>4</sup> *Ibid.*, p. 167. <sup>5</sup> *Ibid.*, p. 216.

small parcels of tobacco dispersed up and down for a distance of two hundred miles, and making necessary a heavy expense to gather them in. What with charges for cask, freight, and custom, he estimated that his salary was reduced at least one half in its actual value.<sup>1</sup> At this time, the perquisites received by preceding secretaries in the form of tenants who worked their lands, and of cattle which supplied milk, butter, and beef for sale or consumption by the Secretary's family, had been entirely extinguished. Harvey attributed this fact partly to mortality, partly to the neglect and carelessness of the Secretaries themselves; he deemed it only just that, in order to counterbalance this loss of servants and cattle, Kemp should be paid a larger salary than the previous Secretaries had been allowed; and he, therefore, recommended that the annual remuneration for his services should not be suffered to fall short of twenty thousand pounds of tobacco.<sup>2</sup> As late as 1658, the Secretaries still held a remnant of the lands assigned to their office by the Company; but it seems to have added but little to their income. In the course of that year, Secretary Claiborne leased fifty acres belonging to his office situated in Northampton county, at a rate amounting to only one barrel of corn a year.<sup>3</sup>

A fixed schedule of fees was, in 1642-3, arranged for the Secretary's benefit. It was provided that he could legally charge fifty pounds of tobacco for issuing a patent, a freedom, a probate under seal, and a license to trade; thirty pounds for issuing a passport or an

<sup>1</sup> British Colonial Papers, vol. iv., No. 85, I.

<sup>2</sup> *Ibid.*, No. 85, II.

<sup>3</sup> Northampton County Records, vol. 1655-58 (last part of volume), p. 19.

execution; and fifteen for a common warrant and the copy of an order. For recording any deed or paper, he was entitled to six pounds of tobacco for every ordinary sheet of handwriting which the document contained.<sup>1</sup>

Henry Hartwell estimated the amount of the Secretary's average income from year to year at a figure ranging between four hundred and five hundred pounds sterling. This sum was derived from his regular fees, and also from certain perquisites he was permitted by law or the custom of the country to receive.<sup>2</sup> We learn from the records of Lancaster county that, about 1700, the profits of the office reached an annual total of about one hundred and thirty-six thousand pounds of tobacco, of which about twenty-seven thousand pounds were derived from the public treasury, and about seventy-three thousand from fees. About thirty-six thousand represented the "salaries" paid by the county clerks to the Secretary.<sup>3</sup>

In the earlier half of the century, when the business transacted in the office had not yet become very heavy, the time appointed for the attendance of the Secretary or his deputy covered the interval between eight and ten in the morning, and two and four in the afternoon. Sundays and holidays were, of course, excepted.<sup>4</sup> It should not be forgotten that the Secretary served also as a member of the Council, and was, therefore, ex officio a member of the Upper House and of the

<sup>1</sup> MS. Laws of Virginia, 1642-3, Clerk's Office, Portsmouth, Va.

<sup>2</sup> B. T. Va., 1697, vol. vi., pp. 143-4.

<sup>3</sup> *Va. Maga. of Hist. and Biog.*, vol. viii., p. 184. "Salary" at this time seems to have signified also "percentage." The 36,000 pounds of tobacco was most probably the amount paid the secretary by the county clerks.

<sup>4</sup> Randolph MS., vol. iii., p. 225.



General Court, the duties of which responsible positions absorbed much of his attention when these bodies were in session.

The apartment in which the records of the Secretary's office were preserved changed several times under the influence of the different vicissitudes marking the history of the most important public buildings situated at Jamestown. An order of Assembly, in 1673, impowered the Secretary to occupy the garret belonging to the eastern side of the State-House.<sup>1</sup> After the destruction of Jamestown a few years later, the incumbent of the office was permitted to remove the records in his custody to his residence at Richneck. This was allowed as a measure of safety and convenience.<sup>2</sup> When the new State-House was completed in 1685, the room under the apartment in which the General Assembly met was granted to the Secretary as a place where to store all the books and papers with whose keeping he was charged. This room seems to have been divided from the General Court chamber by a narrow partition.<sup>3</sup>

<sup>1</sup> Orders of Assembly, October, 1673, Colonial Entry Book, vol. lxxxvi.

<sup>2</sup> Orders of Assembly, 1676-7, Colonial Entry Book, vol. lxxxvi.

<sup>3</sup> Minutes of Assembly, Oct. 8, 1685, Colonial Entry Book, 1682-95.

## CHAPTER XIX

### House of Burgesses: First Legislative Bodies

THE first body possessing a lawmaking power to assemble in Virginia, and, therefore, in any of the American Colonies of England, was composed of the President and Council chosen in accord with the provisions of the charter of 1606. The instructions for the administration of the affairs oversea expressly declared that this body should have the authority to formulate "constitutions and ordinances" for "the better order, government, and peace of the people"; but it was denied all right to adopt regulations touching the loss of life or limb as punishment for any crime. The various regulations to be framed by the President and Council were required to conform strictly to the general law of England; and they could at any time be altered or annulled by the King, to whom they had to be submitted for approval.<sup>1</sup> It would seem that, to a certain extent, the President and Council performed very much the same functions as the Governor and Council discharged later on when they came to serve as an Upper House or Senate. It was in this respect at least as if they constituted a single chamber in which acts of legislation originated and were passed on finally.

<sup>1</sup> Instructions, 1606, Brown's *Genesis of the United States*, vol. i., p. 73.

The legislative powers, or powers substantially legislative, granted to this Council, associated with the memorable provision of the charter of 1606 guaranteeing to the colonists all the rights of "native-born Englishmen," must, in no very remote future, have led to the calling together of a General Assembly even if Virginia had continued from the beginning to be subject directly to the Crown, instead of being transferred, after 1609, to the control of the London Company. That the colonists at a very early date believed that such an Assembly could be legally summoned under the authority of this particular clause was shown by the fact that the arrival of Captain Newport alone prevented the meeting of such a popular body. It is probable that the crying distress and want prevailing at that hour in Jamestown had suggested to the minds of the perplexed and despairing settlers,—led in this instance by the Recorder, Gabriel Archer,—that an assembly of delegates chosen by the universal voice might be able to adopt some remedy for the frightful evils of their situation. It was a natural hope to rise in the breasts of Englishmen accustomed for so long a time to popular discussion of all questions affecting the interests of the community.<sup>1</sup>

Even under the charter of 1609, by which Virginia passed under the administration of a Company, the Governor and Council enjoyed powers substantially legislative in character. De la Warr, by the terms of his commission, was authorized to rule the Colony by such regulations as the Council and himself should think fit to pass, provided that these regulations were within the scope of the rights granted to the Company

<sup>1</sup> Wingfield's Discourse, p. lxxxvi., Arber's edition of Captain John Smith's *Works*.



itself in its letters-patent.<sup>1</sup> Such was the warrant for the Divine Laws introduced by Lieut.-Governor Gates, and for the Martial Laws introduced by Dale, as De la Warr's representatives, during his absence from Virginia.<sup>2</sup> These distinguished men, were, no doubt, acting with the Council's approval in adopting these remarkable ordinances, which, therefore, were practically the result of the exercise of a legislative power more or less distinctly lodged in the Governor and Council at a time when this body was not as yet hampered in its enactments by its association with a House of Burgesses.

A somewhat similar power was possessed for a short period by the leaders of the particular plantations, hundreds, or colonies established by them in Virginia in the interval between 1618 and 1620. These men were specially authorized by the quarter court of the Company in London to associate with themselves divers of the gravest and discreetest of their companions "to make orders, ordinances, and constitutions for the better ordering and directing of their servants and business." It was provided in this instance, as in all others, that the regulations should not be repugnant to the laws of England.<sup>3</sup>

It was not until 1619 that the first legislative assembly of English-speaking people to convene in the Western Hemisphere met at Jamestown; and from that year, which was made forever memorable by this great event,

<sup>1</sup> Commission of De la Warr, Brown's *Genesis of the United States*, vol. i., p. 379.

<sup>2</sup> Dale's Martial Code contained the thirty-two Articles of War which had been adopted for the regulation of the Army in the Netherlands; Neill's Va. Co. of London, p. 75.

<sup>3</sup> Abstracts of Proceedings of Va. Co. of London, vol. i., p. 39.

to the present day, there has been no discontinuance in practice of the principle of popular representation within the area of country covered by the modern United States. The earliest of all the Assemblies was composed of the Governor and Council sitting as a Senate or Upper Chamber, and of a certain number of elected delegates sitting as a House of Burgesses or Lower Chamber. Of the two branches, the House of Burgesses was the most powerful, the most distinctive, and therefore, the most interesting. This body was often and not inappropriately spoken of as "the Assembly," as if it constituted the very heart, brain, and soul of the Colony's legislature, as in reality it did. It was also very frequently designated, owing to its resemblance to the Lower House of Parliament, as the "House of Commons," a branch that represented most directly the interests of the people at large.<sup>1</sup>

Before enumerating and describing the powers of the House of Burgesses, it will be appropriate to give some account of the manner in which the members were summoned, the basis of the right of suffrage, the organization of the Chamber, and the like.

<sup>1</sup> Randolph MS., vol. ii., p. 286.

## CHAPTER XX

### House of Burgesses: Summons and Basis of Suffrage

THE course followed in summoning the Burgesses remained in practice almost precisely the same throughout the Seventeenth century. The power of convoking them was, as we have already seen, vested in the Governor acting with the approval of the Council.<sup>1</sup> The formal summons always ran in the Governor's name; and in case he neglected, purposely or unintentionally, to sign the writs of election and to order their dispatch, the Secretary was, during the period of the Commonwealth, required to do both in his stead; and if the Secretary also failed to perform the duty, the sheriff of each county was authorized to call the people together to cast their votes for delegates.<sup>2</sup> In 1676, when the Colony had fallen into a state of great distraction, the proclamation summoning the Assembly was signed by five members of the Council, headed by the younger Nathaniel Bacon, a course recommended to him by several of his trusted followers, whose advice he had sought.<sup>3</sup> When the affairs of

<sup>1</sup> See, for an instance of the exercise of this power, Robinson Transcripts, p. 238.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 517.

<sup>3</sup> British Colonial Papers, vol. xxxvii., Doct. 42.



the community had again become settled, the former custom was fully restored; the regular writ, bearing the seal of the Colony, was again drawn in the name of the Governor and signed by him; it was issued from the Secretary's office at least forty-one days before the day for taking the vote arrived; and was addressed to the different sheriffs.<sup>1</sup> These officers were, about the middle of the century, required to give notice at least six days previous to the day of election<sup>2</sup>; and it was the Secretary's duty to see that the writs reached their hands in time to allow this to be done. In order to accomplish this with certainty, he was expected to act with expedition, as a delay in forwarding the writs might make it impossible for the sheriffs to spread the announcement among the people before the appointed day.<sup>3</sup> For his trouble in sending out the writs, the Secretary received one hogshead of tobacco from each county entitled to join in the election.<sup>4</sup>

An Act of Assembly, passed in 1654-5, provided that, ten days after a writ of election had been placed in the hands of the sheriff, he was to publish it in the usual manner, and then, in person or by deputy, proceed from house to house for the purpose of informing every person entitled to vote of the date of the proposed election.<sup>5</sup> At a later period, as soon as the writ was delivered to this officer, he was required to send a copy of it, with the designated day endorsed on the back, to the minister of every parish situated in his county, with the request that it should be read before the

<sup>1</sup> Beverley's *History of Virginia*, Section House of Burgesses.

<sup>2</sup> Hening's *Statutes*, vol. i., pp. 299-300.

<sup>3</sup> *Ibid.*, vol. ii., pp. 22, 106.

<sup>4</sup> *Ibid.*, vol. ii., p. 22; Randolph MS., vol. iii., p. 286.

<sup>5</sup> Hening's *Statutes*, vol. i., p. 411.

congregation at least two Sundays in succession; and when this had been done, a certificate of the fact, with the copy of the writ, had to be returned to the sheriff. Should the latter fail to send a copy to each minister, he became liable to a fine of two thousand pounds of tobacco.<sup>1</sup> At the end of the century, every sheriff was authorized to employ a certain number of persons, usually the constables, to give notice to each freeholder residing in his county of the appointed time and place of election.<sup>2</sup>

Who was entitled to cast a vote? There seems to be no conclusive proof that the members of the first Assembly, which met in 1619, were chosen by the suffrage of all the freemen residing in the Colony, irrespective of whether or not they were owners of property. The probability is that the right to vote was in the beginning enjoyed by every male person of the legal age who was neither a white servant nor a black slave, for the only important change known to have been made in the franchise previous to 1654-5 was one qualifying the privilege. In 1645, not only did every freeman possess the right to vote, but also "every freeman who was a covenanted servant." This expression perhaps referred to men who had obtained their freedom, and afterwards entered into second

<sup>1</sup> Hening's *Statutes*, vol. iii., p. 82.

<sup>2</sup> *Ibid.*, p. 172. "Upon ye Readinge and publication of the writ for Burgesses, it is the judgment of the court that some of themselves with other part of the freeholders of the said county have not had due notice of the time of election, and it being affirmed by the sub-sheriff that there was a precept directed by the High Sheriff to the constables of the said county as expeditiously as could be after the writ came in his hands to give immediate notice to the freeholders of the time for election of Burgesses, the defeat of which the Sheriff is ordered to enquire into, and report to next court"; Northampton County Records, vol. 1689-98, p. 243.

indentures; or what is more probable, it meant simply men who were now free, but who had once been servants under covenant.<sup>1</sup> So solicitous was the General Assembly at this time that every freeman should cast his vote that anyone failing to do so without proper excuse was heavily fined.<sup>2</sup>

In 1654-5, as already stated, the right to vote was restricted to housekeepers, whether freeholders, leaseholders, or ordinary tenants. Only one person in a family was now entitled to the franchise.<sup>3</sup> In the course of the following year, this regulation was abolished, on the ground that "it was hard and disagreeable to reason that any person should pay equal taxes, and yet have no vote." All freemen were, in consequence of this change of view, again admitted to the enjoyment of the suffrage.<sup>4</sup> This law remained in force until 1670, when it was repealed. Two reasons were given for this action at the time: First, as long as the only qualification for voting was to be a freeman, a very large proportion of those possessing the right were men who had served their time as agricultural servants, and being without property, had no real stake in the welfare of the country. It was found (so the repealing Act stated) that these men were more disposed to raise a tumultuous disturbance at elections than to use the franchise with such judgment as to assure the promotion to office of persons who would preserve the peace and advance the prosperity of the whole community. Secondly, in England (the laws of which had to be followed in the Colony as far as

<sup>1</sup> Hening's *Statutes*, vol. i., p. 333.

<sup>2</sup> *Ibid.*; vol. ii., p. 82.

<sup>3</sup> *Ibid.*, vol. i., p. 411.

<sup>4</sup> Randolph MS., vol. iii., p. 266; Hening's *Statutes*, vol. i., p. 403.



possible), the suffrage was confined to those citizens whose ownership of real and personal estate forced them in practice to consult the best interests of their parish, their shire, and their country in every vote they cast. Under the influence of these two reasons, the General Assembly restricted the suffrage to freeholders and householders, as the persons who had to bear the chief burden of taxation.<sup>1</sup>

Upon their face, these two grounds for the adoption of a qualified suffrage in the Colony appear to have been sensible and judicious. In our own age, when there is a decided tendency even in the freest lands to narrow the circle of voters in each community to property holders, the view to be taken of this colonial law ought to be one that should at least show an intelligent understanding, if not entire approval, of its spirit. It is possible that the Assembly justified to some degree their passage of such an Act by the assertion that, among the freemen who had been agricultural servants, a proportion, small it may be and exercising little influence, had been sent over as convicts, and, therefore, were not to be looked upon as desirable additions to the citizenship. It is true that this personal element had existed in the Colony from a very early date, but, by 1670, it may have become a more important factor in elections owing to the introduction during previous years of so many political prisoners, whose discontented state of mind, no doubt, continued even after they had acquired their freedom. There is, however, every reason to think that such a justification for the restriction of the suffrage was never advanced, as it would have been wholly untenable, not only because

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 280; Acts of Assembly, 1669-70, Colonial Entry Book, vol. lxxxvi.

the number of convicts among the freemen was too insignificant to be seriously considered, but also because it would have been easy by a single clause in the franchise law to shut out of the body of voters every man who at any time had been sentenced for some offence. The single regulation established by the Assembly was that no one without property should enjoy the franchise. If a man possessed property, he was entitled to that right whether he had always been a freeman or not, or whether or not his reputation was devoid of the stain of a conviction for crime. Practically, the qualification does not seem to have been a radical one; indeed it was far less onerous in Virginia than in England, where it was so much more difficult to acquire property, whether real or personal. In Virginia, on the other hand, it was in the power of every able-bodied man who had the least desire to improve his condition, to become, if not the owner of a small estate of his own in fee simple, then the renter of a small tract of land from some large proprietor. The landowners were always willing to lease a part of the superabundant area of ground in their possession, and such a leasehold title, by making the tenant a householder, gave him the right to participate in the suffrage. It may be taken for granted that all the emancipated servants who had a spark of energy in their composition, an industrious spirit, and ambitious impulses, associated with the common-sense of the average individual, made the most of the extraordinary opportunities which the vast extent of unredeemed and idle soil, whether already owned by some one, or belonging to the public domain still unpatented, presented.

In the light of these opportunities, the General Assembly's action in restricting the suffrage appears

to have been neither unwise nor unjust. When the same law was adopted many years before, it is probable that the motives for its passage were the same; and as popular government in Virginia during the Seventeenth century reached its highest development in the time of the Commonwealth, these motives must have been extremely powerful. And there is no reason to think that they had grown less powerful by 1670, when the same qualification was readopted. Unfortunately, however, for the absolute sincerity of these motives, the new law was passed by a body, and at a time, which has not unnaturally exposed the measure to grave suspicion. This body was the notorious Long Assembly, an Assembly that deserved the condemnation which its selfish and arbitrary proceedings have received. Seven years earlier, when this Assembly had just begun a term of office destined to cover half a generation, and when it still reflected the sympathy with the people at large imbibed in its recent election by universal suffrage, its members had resented any change in the franchise. In 1663, Berkeley proposed that taxation should be imposed, not by the poll, but by the acre. The Burgesses at once replied that, if the taxes were to be levied on land-owners alone, then they alone should possess the right of electing the members of the House. "This," they declared, "the other freemen, who are more in number, may repine to be bound to those laws they have no representatives to assent to the making of." "And," they added, "we are so well acquainted with the temper of the people that we have reason to believe they had rather pay their tax than lose their privilege."<sup>1</sup> Seven years later,

<sup>1</sup> See Bancroft's *History of the United States*, vol. ii., p. 207, quoting one of the General Court Records afterwards destroyed



after an uninterrupted enjoyment of power under the influence of the great reaction in England, and of Berkeley's personal example, the same body of men, who had simply adjourned from session to session without submitting themselves as a whole again to the electorate, were far less in sympathy with the popular wishes, hopes, and feelings. In the course of these seven years, they had passed Acts well calculated to arouse the opposition and indignation of the people; and in spirit and conduct seem to have gradually drifted away from their former popular sympathies; indeed, in consequence of Berkeley's unwarranted course in merely proroguing them from year to year, they, in time, grew to be practically indifferent to popular approval, and practically independent of popular dissatisfaction. It was just at the moment when the people's discontent had begun to rise perceptibly that this self-perpetuating Assembly, for it was in reality no more, reached the conclusion that the safety of the community was endangered by a system of suffrage which had prevailed with but one intermission since 1619; and that the very class of men having most reason to be restive under the burden of its legislative measures, was the very class which it ought to deprive of the right to vote. It is possible that the Assembly was justified in thus checking an unruly element; but there is good reason to think that much of this element's turbulence had been caused by the Assembly's own conduct as a legislative body. It is difficult to say how far this restriction of the suffrage contributed to the subsequent insurrection, but there can be no

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in the conflagration which occurred at Richmond, Va., in 1865, when the Confederates evacuated the city.

doubt that it had an important influence in bringing about that movement, which was such a brave protest against abuses in so many different forms.

Naturally, the change in the suffrage received the approval of the English Government. In the instructions given to Berkeley in November, 1676, he was directed to see that an Act to restrict the right to vote to freeholders alone was passed. The chief reason given for this further limitation of the franchise was that it would place the Colony in this respect on the same footing as the Mother Country, to which it was expected to conform as nearly as possible in all its laws.<sup>1</sup> Almost at the very time that this command was being formulated, the Reform Assembly was holding its sessions, and one of its first measures was to restore the unqualified suffrage prevailing in Virginia previous to 1670. All freemen, whether property-holders or not, were again invested with the right to vote.<sup>2</sup> This regulation, in spite of the instructions from England already mentioned, remained in force until 1684; the suffrage was then, for the third time in the history of the Colony, restricted. After this, several successive Governors received orders from the Commissioners of Trade and Plantation to see that freeholders alone enjoyed the franchise to the exclusion even of mere householders<sup>3</sup>; in 1699, this further

<sup>1</sup> Colonial Entry Book, 1675-81, p. 112; Hening's *Statutes*, vol. ii., p. 425. Blackstone, in stating the qualifications of the English voter, declares that he must have an estate in lands and tenements situated in the county where he voted; and that this estate must be for life at least and return an income amounting certainly to forty shillings; that he must be twenty-one years of age, at the youngest; and that he must never have been convicted of any crime.

<sup>2</sup> Bacon's Laws, 1676; Hening's *Statutes*, vol. ii., p. 356.

<sup>3</sup> See Instructions to Howard by James II. and William and Mary, Colonial Entry Book, 1685-90, pp. 38, 308.

qualification was finally adopted; but no single woman, or minor, or popish recusant, whether owning a freehold or not, was allowed to participate in an election.<sup>1</sup>

<sup>1</sup> Hening's *Statutes*, vol. iii., p. 172.



## CHAPTER XXI

### House of Burgesses : Place and Manner of Election

AT what place was the election held? It would appear that, in 1633, the citizens assembled at the sheriff's residence to cast their votes.<sup>1</sup> A law passed by the General Assembly a few years later provided that no man should be compelled to leave his own "plantation" in order to express his preference for some one to serve in the House of Burgesses as his county's representative. This regulation would seem to signify that, at this early date, the sheriff or his deputies visited the different estates on the appointed day of election, and received the separate votes, a very tedious method for those officers, but one highly convenient for the different citizens themselves.<sup>2</sup> About six years after this plan was adopted, it was declared that the election should be held wherever the county

<sup>1</sup> Accomac County Records, vol. 1632-40, p. 61, Va. St. Libr.

<sup>2</sup> Randolph MS., vol. iii., p. 231. The sheriffs, it seems, had a short time before "warned the inhabitants out of their plantations, not only contrary to the privileges of the places, but to the great inconvenience, charges, and dangers of the people inhabiting the said places." The word "plantations" may have been designed to mean "precincts" or "settlements," and not simply separate estates. In other words, each settlement having its own voting place, it was not necessary for the sheriff to visit each planter's home to obtain his vote.

court met, which might be in a permanent court-house, or in a private residence, or even in a tavern.<sup>1</sup> This regulation seems to have commended itself to popular favor, owing chiefly to the fact that it was customary for the people, at stated intervals, to assemble at the county seat; in the first place, this spot, being centrally situated, was easily reached; and in the second, the claims of business as well as opportunities for diversion drew a large crowd to every session of the county court. The announcement that an election of Burgesses was also to occur offered simply an additional reason why the citizens should gather there. In 1660, the same regulation was readopted, and again in 1670.<sup>2</sup> An order passed in Northampton county in 1677 stated incidentally that the county seat had long been the place appointed for the election of Burgesses<sup>3</sup>; and this fact was again mentioned in the text of the franchise law of 1699,<sup>4</sup> a proof that the reasons, which, as early as 1645, had made the county seat the most convenient place for such an election, as well as the most agreeable from a social point of view, remained in force until the close of the century.

In what manner was the Burgess chosen? It is now impossible to find out whether in the first election held in the Colony, that of 1619, the voter declared his preference by ballot or by word of mouth. As the method at this time of choosing officers in the quarter courts of the London Company was generally by use of the balloting box, it is quite probable that the same method was followed in Virginia when the first popular

<sup>1</sup> Hening's *Statutes*, vol. i., pp. 299-300; vol. ii., p. 280.

<sup>2</sup> *Ibid.*, vol. ii., pp. 20, 280.

<sup>3</sup> Northampton County Records, Orders Nov. 28, 1677.

<sup>4</sup> Hening's *Statutes*, vol. iii., p. 172.

election took place there. In 1642, the Burgesses of Northampton county are stated to have been selected by a "plurality of voices," an expression which would seem to indicate, beyond doubt, the employment of the *viva voce* method.<sup>1</sup> Only four years later, citizens very frequently assumed the right to cast a vote through the medium of a letter to the sheriff addressed to him at the county seat, where it was to be publicly read and counted; but the General Assembly finally pronounced this course illegal because calculated to produce disorder by raising disputes as to the genuineness of the signatures. That body thereupon adopted the regulation that an election of Burgesses should only be valid if made by a "plurality of voices"; and that no "handwriting" should thenceforth be received as a proof of a voter's preference. It is possible that the word "handwriting" as appearing in this law referred only to letters, but it seems most probable that the General Assembly intended to make the *viva voce* method of election the exclusive method to be followed in the Colony.<sup>2</sup> As soon as the right to vote was subjected to an important qualification (this, as we have seen, occurred in 1654-5) the plan of expressing a choice by "subscription" was adopted. The successful candidate was described as having secured the "major part of the hands of the electors."<sup>3</sup> It is to be inferred from this that the method followed was that of the ballot, which consisted of the voter writing the name of the person he preferred on a piece of paper and

<sup>1</sup> Northampton County Records, Orders, March 6, 1642. The word "voices" may, in this entry, have been loosely used for "votes" or "preferences"; but the probabilities are against this.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 333.

<sup>3</sup> *Ibid.*, vol. i., p. 411.



endorsing it with his own name. There is no reason to think that this act was attended with great secrecy, as in modern times.

The plan of the ballot commended itself so highly to public favor that it was continued even after the restoration of universal suffrage, which followed so soon. In retaining this method, the General Assembly spoke with disapproval of the "tumultuous way"<sup>1</sup> once prevailing, an additional proof that the expression "plurality of voices" really meant the *viva voce* manner of choosing Burgesses. Nevertheless, to this latter method the Colony reverted before the close of the century.<sup>2</sup> The plan of electing by plurality of voices was then made subject under special circumstances to a slight modification: if the election of a Burgess could not be determined "on the view" in the case of a disputed result, then the sheriff was, with the consent of the voters present, required to appoint a certain number of assistants, with instructions to take the poll in writing; but before each person was permitted to express his choice, he was compelled to swear that he was a freeholder in the county or town where the election was occurring. This election was to be declared void if it could be proved that the successful candidate had offered the voters bribes in the form of money, food, or liquor.<sup>3</sup>

As soon as the election had taken place, and the name of the successful candidate was announced, it was the sheriff's duty to return that name to the Secretary's office at Jamestown. This was done by writing the

<sup>1</sup> Acts of Assembly, 1655-6; Randolph MS., vol. iii., p. 266.

<sup>2</sup> Beverley's *History of Virginia*, section relating to election of Burgesses.

<sup>3</sup> Hening's *Statutes*, vol. iii., p. 172

name, or names, if there were more than one Burgess chosen for the county, on the back of the original writ, and forwarding the document with that endorsement.<sup>1</sup> In 1654-5, the penalty for making a false return was fixed at ten thousand pounds of tobacco; and in 1699, at forty pounds sterling.<sup>2</sup> It was no bar to election as a Burgess that the candidate was already the incumbent of one civil position in the county; a citizen could be at the same time a justice of the county court, and a member of the Lower House; or he might serve simultaneously as the sheriff and the representative of his county; but in the latter case, he was required to appoint a deputy-sheriff to perform, during his own absence at Jamestown, all the duties of the first office.<sup>3</sup> At one period, clergymen were forbidden to offer themselves as candidates for the House<sup>4</sup>; but at a later date, this prohibition seems to have been removed. The English rule that the representatives of one county might be selected from among the citizens of another was followed in Virginia; for instance, Thomas Mathew, who resided in Northumberland, was chosen as a Burgess for Stafford about 1676; and a few years afterwards, Colonel St. Leger Codd was elected at the same

<sup>1</sup> Acts of Assembly, 1662, Colonial Entry Book, vol. lxxxix., p. 19. The endorsement of the sheriff ran as follows: "By virtue of this writ, I have caused to be legally summoned the freeholders of my county to meet this day, being the . . . day of . . . at the courthouse of this county, being the usual place of election of Burgesses, and have given them charge to make the election of two of the most able and discreet persons of said county for their Burgesses, who accordingly have elected and chosen A. B. and C. D., Burgesses for said county for the next General Assembly." Henning's *Statutes*, vol. iii., p. 172.

<sup>2</sup> *Ibid.*, vol. i., p. 411; vol. iii., p. 172.

<sup>3</sup> Richmond County Records, Orders, Nov. 12, 1692.

<sup>4</sup> Henning's *Statutes*, vol. i., p. 378; Hawks, p. 60.

time a member for both Lancaster and Northumberland; and as he decided to sit in the House as the Burgess for the latter county, a new writ had to be issued for a second election in Lancaster.<sup>1</sup>

<sup>1</sup> *Bacon's Rebellion*, by T. M., p. 12; Force's *Hist. Tracts*, vol. i.; Minutes of Assembly, 1680, Colonial Entry Book, vol. lxxxvi.



## CHAPTER XXII

### House of Burgesses : Its Membership

THE members of the House of Burgesses belonged to the circle of the foremost citizens of the Colony. Although all ranks of freemen enjoyed the franchise down to 1670, there is no indication that this system of universal suffrage led to the frequent election of representatives of an inferior standing from a social point of view. At the end of the century, when for thirty years the right to vote had been subject to a qualification (a qualification, however, which had not deprived the electorate entirely of its popular character, owing to the facility with which landed property was acquired at that time), Robert Carter, in accepting the Speakership of the House, declared that this body consisted "of the better sort of gentlemen from all parts of the country."<sup>1</sup> And this was as true of the early as it was of the later years in the history of the century. In fact, the same condition prevailed in Virginia as in the Mother County:—not only was every prominent family represented from time to time among the Burgesses, but there was a very general sentiment that it was the becoming step for every young man of promise and fortune, whether in possession or in prospect, to enter the House almost as soon as he came

<sup>1</sup> Minutes of Assembly, May 2, 1699; B. T. Va., vol. lii.

of age in order that he might, while still young, acquire some experience of public affairs. Perhaps, not a single heir to a well-known name, high social position, and large estate, who also was distinguished for marked capacity, failed to present himself almost immediately after he had passed his minority, to the voters of his county as a candidate for this honor. The course followed in this respect by the younger William Byrd was that followed by all the young men of his social class able to lay claim to anything approaching his personal accomplishments and pecuniary advantages. In 1696, not long after his return from England, where his education had been receiving the finishing touches, he was, through his father's influence, chosen a member of the House of Burgesses; and only one year later, so great was the impression made by his talents and personal charms, and in such high consideration was his family name held, that he was sent by the Assembly to London to deliver an important address into the hands of the Board of Trade.

In Virginia, as in England, the large land-owner carried so much weight that he found no difficulty in securing the election of a son to the House, especially if that son had shown that he possessed decided abilities; and this facility was the greater when the electorate became restricted to persons owning a direct interest in the soil, either as freeholders and housekeepers, as in 1670, or as freeholders alone, as in 1699. The broader the plantation, and the more numerous the proprietor's slaves and herds, the more extensive was the influence exercised by him among voters belonging to his own calling, and the more easily he obtained the advancement of any person of his own blood aspiring to enter public life. In a society like that prevailing at this

time, when differences in social rank were as marked as though legally recognized, the voters of every county, no doubt, regarded it as reflecting distinction on themselves to be represented by a member of the leading family of the community; and if that member happened to be in the first flush of youthful energy and ambition, the interest in his election was all the more keen; such a young man was quite probably looked upon as simply offering to perform political services which the electorate had a right to expect of him on account of the example set at the same age by his own father, and perhaps by his grandfather also. And there was also, perhaps, something of paternal concern in their attitude towards him—the hope that he would prove equal to the reputation of his name, and a certain indulgence for his inexperience, and a certain pride in him should he exhibit unmistakable ability.

In the uneventful life of the plantation, the opportunity of going to Jamestown in the character of a Burgess, no doubt, held out to youthful candidates alluring prospects, not only of political distinction, but also of social diversion, a combination sure to make success in the election the more pleasing. There he would meet all the first men of the Colony; there form friendships which would continue during the rest of his life; there pass many charming hours in social intercourse as well as acquire a full knowledge of public affairs, and perhaps win a high personal standing by showing industry in committee, and talent in the debates on the floor.

But the membership of the House of Burgesses was not confined to young men, nor even to men who had always occupied a conspicuous social position in the Colony. It was looked upon as a proper reward for a successful career, however humble in the beginning



that career may have been. Throughout the century, there sat in this Chamber a number of persons who had started in Virginia as indentured servants, but who, by foresight and prudent management after they became freemen, had accumulated comfortable estates, and won the highest respect of their neighbors. In the Assembly of 1654, there seems to have been at least three members whose first connection with the Colony was in the character of agricultural laborers; but in their case, as in that of so many others, this may have meant that they had bound themselves out really as agricultural apprentices to learn how to cultivate tobacco before investing money of their own in the purchase of a plantation.<sup>1</sup> It is quite probable, however, that some of the Burgesses who had begun as agricultural servants had begun as mere laborers dependent upon their own efforts alone for their advancement; and by superior intelligence, unremitting energy, and a fixed determination, had, after the expiration of their terms, raised themselves to a position in the community entitling them to election to an office of so much influence and consideration. The great body of the membership of the House, however, was composed of planters, who had either inherited their property in the Colony, or had come over from England with sufficient funds to purchase an estate at once, or to acquire a patent by introducing a certain number of new settlers.

What was the territorial basis of representation? In the first Assembly to convene, the members had been chosen by boroughs, which embraced at least three

<sup>1</sup> This was apparently the course followed by Adam Thoroughgood and others. Among the members, in 1654, who had been agricultural servants were Abram Wood, John Trussell, and William Worlick; see Neill's *Va. Carolorum*, p. 279.

cities or corporations, namely James City, Charles City, and the City of Henricus; three Hundreds, namely, Smythe's, Martin's, and Fleur de Hundred; and five plantations or settlements.<sup>1</sup> The local divisions entitled to Burgesses in 1629 included the "plantation at the College," the "Necke of Land," "Shirley Hundred Island," and "Henry Throgmorton's Plantation."<sup>2</sup> The shire system was introduced in 1634, and, from this time, the Burgess represented the people residing within the bounds of a shire instead of, as before, representing the people residing within the bounds of a somewhat vaguely defined settlement, or group of plantations. As soon as the population of a shire or county became so large that it was found necessary to lay off its area into two parishes, not infrequently each of these parishes was at once permitted to choose a Burgess of its own; but in an instance of this kind, the limits of the legislative district were as clearly determined as if the county as a whole had been allowed but one member.<sup>3</sup> One reason for granting to a parish the right of electing its own representative apart from any consideration of the number of its inhabitants, was that its particular interests very often demanded a special exponent in the House as a protection against serious encroachment, or as a means of promoting some particular object.<sup>4</sup>

As the number of Burgesses were ordered in a measure by the number of inhabitants found in the Colony, that number increased with the growth of

<sup>1</sup> Minutes of Assembly, 1619, p. 10, *Colonial Records of Virginia*, State Senate Doct., Extra, 1874.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 138. At this time, the expression in use for the local divisions was "limitts."

<sup>3</sup> *Ibid.* pp. 250, 277, 520; Randolph MS., vol. iii., p. 266.

<sup>4</sup> Randolph MS., vol. iii., p. 266.

population. In 1619, there were twenty-two members of the House; in 1629, before the formation of shires, forty-six; in 1639, exclusive of the representatives of James City county, twenty-seven, but together with the representatives of that county, there were probably thirty-two.<sup>1</sup> At this time, Charles City, Warwick River, and Isle of Wight were each entitled to four members; Henrico, Charles River, and Upper Norfolk each to three; and the remainder of the shires, omitting James City, to two respectively. No general rules so far seem to have been applied as a test for increasing or diminishing the representation of a county; but, in 1639, it was provided that no county, however large and populous, should send more than four members to the House. Jamestown was not embraced in James City county in the enforcement of this regulation.<sup>2</sup> In 1652, the membership, independently of Lancaster, numbered thirty-five Burgesses. In this year, the rule having been now changed, James City was represented by six (which no doubt included the one elected by Jamestown), Northampton by five, and Isle of Wight and Lower Norfolk by four respectively. With the exception of Henrico, the remaining counties had respectively two representatives. In the following year, thirty-four Burgesses were in attendance.<sup>3</sup>

These slight variations would seem to show that the reported number of members from session to session about this time fell or rose in accord with the number

<sup>1</sup> Minutes of Assembly, p. 10, *Colonial Records of Virginia*, State Senate Doct., Extra, 1874; Hening's *Statutes*, vol. i., p. 138; Robinson Transcripts, p. 192. In 1645, James City was allowed six members, five of whom represented the county and one the town; Hening's *Statutes*, vol. i., pp. 299-300.

<sup>2</sup> *Ibid.*, vol. i., pp. 299-300.

<sup>3</sup> Randolph MS., vol. iii., p. 245.



actually present rather than with the number who had a right to be. After the Restoration, there was a disposition to restrict the number of Burgesses in order to diminish the heavy expense entailed by the Assembly. During the existence of the Commonwealth, owing to the almost supreme power of the House, the tendency had been rather toward an increase; in 1660, however, after Berkeley had been reinstated in the Governorship, but before the period of reactionary extravagance had had time to set in, a law was passed limiting the number of representatives for each county to two. Jamestown was still allowed to elect a Burgess of its own. As an encouragement to promote the rapid extension of the frontiers, every new group of plantations containing a hundred tithables among its inhabitants was to be permitted to send a representative to the House.<sup>1</sup>

A large number of parishes had taken advantage of the right granted them at an earlier date of electing Burgesses of their own; and the charge of an Assembly about 1662 was so much augmented by this fact that, in the revised Acts of that year, sharp complaint was made of the expense as one for which there was no real necessity.<sup>2</sup> So great was this charge that the General Assembly left it in each county's discretion to choose one or two Burgesses to represent it in the House. This provision evidently received the popular approval; but, in 1669, it was withdrawn, on the ground that it was likely to occasion serious injury in case the single member was engaged with committee duties, and, therefore, unable to be present on the floor of the Assembly at a moment probably when the debate involved some question touching the welfare of his own county; or

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 20.

<sup>2</sup> Colonial Entry Book, vol. lxxxix., p. 34.

perhaps he was not in attendance on either committee or House, owing to the urgent demands of a private suit in the General Court; or it may be that he was detained at home by sickness; or found it impossible to represent satisfactorily the conflicting interests of the two parishes into which his county had been divided.<sup>1</sup> The counties apparently did not think that the inconveniences thus caused justified them in choosing two Burgesses with perfect regularity; and some of them even risked subjection to the fine of ten thousand pounds of tobacco imposed by the House for every instance of neglect to send up two members.<sup>2</sup> The Long Assembly was now in session, and the electors probably considered it to their real advantage to refrain from filling any vacancies which had occurred in the ranks of the Burgesses; for it was only vacancies that they were now called upon to fill at all, owing to Berkeley's settled policy of retaining the existing House indefinitely.

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 272; Colonial Entry Book, vol. lxxxix., p. 92.

<sup>2</sup> In 1670, Henrico and Middlesex counties were both fined. For fine, see Revised Acts, 1669-70, British Colonial Papers; also Hening's *Statutes*, vol. ii., p. 282.

## CHAPTER XXIII

### House of Burgesses : Frequency of Sessions

**I**N the formal regulations which Wyatt brought over in 1621, it was provided that the Governor should call the Assembly together at first once a year.<sup>1</sup> The first instructions given to Berkeley repeated this injunction; and he was also authorized to summon that body even twice or thrice annually, should the needs of the Colony make that step advisable.<sup>2</sup> In the protest against the re-establishment of the London Company drawn up about 1642, it was stated that the happy condition of Virginia under the Crown's direct administration was most clearly shown by the "freedom of yearly Assemblies," a privilege confirmed and reconfirmed by the royal orders.<sup>3</sup> During the Protectorate, the rule was adopted that the House of Burgesses should meet at least once every two years, and even oftener if the public business seemed to require it<sup>4</sup>; and this rule was continued by the Assembly which, in 1659-60, restored Berkeley to his old position as the Governor of the Colony.<sup>5</sup> Writing to the Council of Foreign

<sup>1</sup> Hening's *Statutes*, vol. i., pp. 110-13.

<sup>2</sup> Instructions to Berkeley, *Va. Maga. of Hist. and Biog.*, vol. ii., p. 282.

<sup>3</sup> Randolph MS., vol. iii., p. 237.

<sup>4</sup> Hening's *Statutes*, vol. i., p. 517.

<sup>5</sup> *Ibid.*, p. 531.



Plantations in July, 1662, Berkeley declared that Assemblies met once every twelve months, in accord with the original instructions of Charles I, to "inquire into the necessities and grievances of the country."<sup>1</sup> It is possible that the General Assembly had, in the short interval since 1660, changed the previous rule, but it is more probable that the Governor himself had simply taken advantage of his right to summon the House as often as his own judgment recommended.

By 1662, that body had, by new elections, become thoroughly in sympathy with the spirit of the English Reaction. Only eight members of the Assembly of 1659-60 were also members of the Assembly of 1662; and of these eight, only five succeeded in retaining their seats after that date. The Assembly convening for the first time in 1662 was prorogued from session to session until it had sat for fourteen years without a single dissolution; and but for the great commotion culminating in the Insurrection of 1676, would probably have remained undissolved until Berkeley's death, or at least until he had finally vacated the office of Governor. The contemporary Parliament in London sat for a period of eighteen years; and the Long Assembly would have reached the same length of life, perhaps have lasted even longer, but for the violent circumstances which arose to shorten its existence.<sup>2</sup> Berkeley looking across the ocean to England might well have thought that he was doing only what was proper in the eyes of the King's faithful subjects by imitating the royal example in holding together indefinitely a legislature of such proved loyalty; but he was

<sup>1</sup> British Colonial Papers, vol. xvi., No. 78.

<sup>2</sup> Hening's *Statutes*, vol. i., pp. 386-7, 526, 530; vol. ii., pp. 197, 250; Bancroft's *History of the United States*, pp. 197, 206.

to find, to his ultimate cost, that the remoteness of the Virginian plantations had bred in the people a spirit of impatience with abuses equal to that spirit which had brought on the English Civil War; and that the royalist reaction in the Colony had not gone so far as to make every section of the citizens submissive to official wrongs. There was a touch of true pathos in the Declaration presented by the people of Stafford county in 1677:—"We find ourselves very much oppressed through these annual Assemblies, and do humbly conceive that, were they triennial and new elections, our burden might be lessened, and we altogether furnished with good laws"<sup>1</sup>; and the same complaint was re-echoed in the Declaration of the people of James City county made in the course of the same year. Having carefully considered all the protests offered by the different counties, the English Commissioners, in 1677, recommended to the English Government the adoption of a regulation requiring the election of a new House of Burgesses at least once every two years.<sup>2</sup>

At the end of the century, Beverley asserted that "there was no appointed time for the meeting of the Assembly," but that "it was called together whenever the exigencies of the country made it necessary, or the King was pleased to order anything to be proposed by them."<sup>3</sup> It does not follow from this statement of the historian that the law prescribing that a new House should be elected once in every two years was not in force. He was perhaps referring merely to the date

<sup>1</sup> Grievances of People of Stafford County, Winder Papers, vol. ii., p. 236.

<sup>2</sup> Winder Papers, vol. ii., p. 149.

<sup>3</sup> Beverley's *History of Virginia*, p. 191.

of its meeting, which rested now, as in the past, in the Governor's discretion. It seems to have been the rule during the closing decade of the century, as during the greater part of that whole period, for the Assembly to convene in February and March as months coming in between two tobacco crops, when the demands upon the planters' attention at home were the least pressing of the twelve months, a fact allowing them to absent themselves more conveniently at that season than at any other.



## CHAPTER XXIV

### House of Burgesses: Remuneration

ONE of the few notable changes in English custom observed in the Colony was to be found in the fact that the members of the House of Burgesses, unlike the members of the House of Commons, received sufficient remuneration to meet their expenses. When the Assembly was first established, and for many decades following that event, there was but little wealth, in the modern sense of the word, in Virginia. In England, the members of Parliament were drawn, not only from the highest social class, but also from the richest; so it was in Virginia, too; but the richest class in the Colony, especially in the earlier years of its history, being as a mass comparatively poor, were indisposed to undertake a costly public duty without some pecuniary return for the actual outlay it made necessary. So far as the surviving records show, there is no indication whether or not the members of the House convening in 1619 were recouped for their expenses. Many years after this (in 1636), the inhabitants of each county were strictly enjoined by an Act of Assembly to defray all the charges incurred by their Burgesses; from which it is to be inferred that, during these early decades, the only aim was to reimburse the representative for what his office had com-

pelled him to pay out of his own pocket, and not really to reward him, as in the present era, for the performance of legislative services.<sup>1</sup> This view was reserved for a later period, when it had come to be thought that the Burgess deserved something more than a sum equal to the amount of his actual expenses; although it is probable that, in theory at least, he never received a salary supposed to greatly exceed the cost of his journey to and from Jamestown, and the cost of his sojourn there while in attendance on the Assembly.

As each county was held responsible for the payment of its own Burgesses' expenses, a fund to be devoted to this purpose had to be periodically raised; as a matter of convenience, this was generally done at the time of the ordinary levy; but occasionally, especially during the earlier part of the century, it seems to have been collected as a separate tax; for instance, in 1638, the justices of Lower Norfolk required the sheriff to obtain from every tithable in the county, or the owner of such tithable, the sum of ten pounds of tobacco, for delivery to Capt. John Sibsey, and Robert Hayes, the two citizens who had served as Burgesses in the last Assembly. In March, 1639-40, the levy for the same purpose amounted to twenty-three pounds of tobacco per poll. In the following year, the two Burgesses having presented a partial statement of their expenses during the previous session of the House, a levy of two pounds of tobacco per poll was ordered to be laid with the object of recouping them for their outlay.<sup>2</sup> It is evident from the variations in the amount received by the Burgesses of Lower

<sup>1</sup> Robinson Transcripts, p. 228.

<sup>2</sup> Lower Norfolk County Records, Orders Nov. 21, 1638; Orders March 17, 1639-40, March 15, 1640-1.

Norfolk during these three years that the idea in making an assessment for their benefit was to reimburse them for all the costs of performing the duties of their office, but not to reward them for their services.

In the course of 1641, the justices of Accomac compensated William Burdett and John Neale for their "paines and care" by requiring every tithable person in the county to perform half a day's labor in the fields of these two Burgesses; and if unable for any reason to do this, to pay them ten pounds of tobacco.<sup>1</sup> A few years later, it was specially provided by an Act of Assembly that, in every case in which a member of the House was compelled to take his servants to Jamestown during a session of that body, the tithables of the county were to join in working his crops for a certain number of days, so that he should not suffer from the enforced absence of his own laborers.<sup>2</sup> This benefit was, no doubt, designed to be merely additional to the payment of his necessary expenses, but it was one greatly valued in a community so purely agricultural.<sup>3</sup>

The bill of particulars presented by the Burgesses of Lower Norfolk county in 1641 throws light on the details of a representative's expenses at this time. These expenses consisted, in the way of victual, of four hogs, twenty pounds of butter, and two bushels of peas; and in the way of liquor, of one hogshead of beer and one case of strong spirits. In addition, there was a claim for the wages of the cook who had dressed

<sup>1</sup> Accomac County Records, vol. 1640-5, p. 61, Va. St. Libr.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 267.

<sup>3</sup> The records show that the right granted by the statute was taken advantage of; see Northampton County Records, Orders April 28, 1643.



their food. It is to be inferred from these several entries that the two Burgesses had established themselves in their own lodgings at Jamestown. A claim was also made for the hire of servants, employed doubtless in rowing the Burgesses up James River, or in managing their sloop in the course of the voyage. The outlay on these different accounts was estimated at a very large amount of tobacco.<sup>1</sup>

About six years later, the annual levy for the same county embraced the particulars of the Burgesses' charges at that time, which show little variation from those of 1641. The principal charges were designed to cover the cost of hiring a boat for the voyage to Jamestown, and also of providing bread and meat for the men engaged as rowers, as well as board and lodging for the representatives themselves during the session of the Assembly, and for the servant who was in their daily employment. The general outlay for these several purposes combined was calculated to be about four thousand pounds of tobacco, which, rated at one penny and a half a pound, brought the entire cost to twenty-five pounds sterling, or five hundred dollars in present values. In 1647, the expenditure for boat and sloop and for the wages and maintenance of the men in charge, and also for lodgings and provisions at Jamestown for the Burgesses themselves and their servant, was estimated at figures ranging between sixty-three hundred and seven thousand pounds of tobacco, or about thirty-seven pounds sterling, which then had a purchasing power of seven hundred and fifty dollars.<sup>2</sup>

These particulars recorded in Lower Norfolk represent the average charges borne on its Burgesses'

<sup>1</sup> Lower Norfolk County Records, Orders March 15, 1640-1.

<sup>2</sup> *Ibid.*, vol. 1646-51, pp. 8, 55.

account, previous to the middle of the century, by each county situated at the same distance from Jamestown. The burden was far from a light one in these early years when the volume of wealth was still small; and it seems to have increased rather than diminished from this time<sup>1</sup>; for instance, about the year 1659, the county of Lancaster was required to pay in settlement of the expenses of Colonel John Carter and Peter Montague, the Burgesses representing its people at that date, a sum closely approximating ten thousand pounds of tobacco, and equal to at least one thousand dollars in purchasing value.<sup>2</sup> This was probably the average expenditure then imposed in all the counties so remotely situated from the Colony's capital as those of the Northern Neck.

At the session of the Assembly held in 1660-1, a definite sum seems to have been, for the first time, granted to the Burgess, which was designated as his wages or salary. By the Act then passed, it was provided that each member of the House should, while in attendance, receive one hundred and fifty pounds of tobacco a day, and, in addition, be paid such an amount as would cover all his expenses in going to and coming from Jamestown. The reason given for remunerating each representative with an exact sum was that the bills of particulars hitherto presented to the counties by their Burgesses, with a

<sup>1</sup> So great was the charge that the General Assembly sometime previous to 1657-8 sought to get rid of it entirely by appropriating for the Burgesses' expenses the fund collected by the imposition of a tax of two shillings on each hogshead exported. In 1657-8, the continuation of this regulation was found impracticable, and the burden was again assumed, certainly for that year, by the counties; see Hening's *Statutes*, vol. i., p. 493.

<sup>2</sup> Lancaster County Records, vol. 1656-66, p. 60.

view to an allowance in the public levy, had, in some instances, caused very great criticism on account of the apparent extravagance of the items, and that so many persons were thereby induced to offer themselves as candidates with the promise of filling the position with far less expense to the taxpayers, that the office of Burgess was now in great danger of becoming mercenary and contemptible.<sup>1</sup>

Thus was established a system of remuneration for Burgesses which was never afterwards altered. Carried out in an honest spirit, that system, even in these early times, was the proper one, but unfortunately it opened the door to serious abuses. So long as the Burgess' expenditures were presented to the county court periodically for consideration, there was always an opportunity of correcting any error or extravagance. On the other hand, when the precedent had been set of paying the representative a fixed sum, it was in the power of any greedy and self-seeking Assembly to increase that amount at any time they pleased; and even when they did not have the boldness to do this permanently, they were able to vote specific sums for their own benefit.<sup>2</sup>

In the meanwhile, the extra expenses to be provided for by the county on its Burgess' account remained as great as ever. In 1665, when the Long Assembly was entering upon its notorious career, it enacted that all debts which that officer ran into in the public service should be paid by the county he represented.<sup>3</sup> This

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 23.

<sup>2</sup> It was stated in the Grievances of Surry County presented in 1677 that the Long Assembly had given "several gentlemen large sums of tobacco which raised the levy to an excessive height"; see Winder Papers, vol. ii., p. 160.

<sup>3</sup> Robinson Transcripts, p. 250.



measure was designed to extend even to expenses which, at this day, seem to have been incurred by a member with the idea merely of maintaining his personal dignity; for instance, in 1673, it was formally declared that each county must meet all the costs entailed upon its Burgess in taking two horses with him to Jamestown, one for his own use, the other for the use of his servant.<sup>1</sup> If there were two representatives, the expenditure was doubled by the presence of four horses to be provided for. The levy for Lancaster county in December, 1673, shows how heavy was the burden of these extra charges:—in addition to the regular salary of one hundred and fifty pounds of tobacco a day received by its Burgess during the session of the Assembly for that year, he was allowed seven hundred and twenty-five pounds for his attendant, at the rate of twenty-five pounds a day; eight hundred pounds for his two horses during the journey to and from Jamestown; and eight hundred and seventy pounds during the time they were quartered there. These several expenses reached a total of twenty-five hundred pounds of tobacco, nearly one half of the fixed amount granted a member for his services. The entire sum represented an outlay to the county of two hundred and thirty-four pounds of tobacco a day during the session of this Assembly, a charge equal at the lowest to twenty-five dollars a day as calculated in modern values.<sup>2</sup> The session of 1673 lasted twenty-nine days, which was probably below the average length at this time. From the burden imposed on this one county alone, it can be seen how powerful an influence the excessive charges for

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 307.

<sup>2</sup> Lancaster County Records, Levy Dec. 10, 1673.

Burgesses (embracing their salaries as well as certain of their ordinary expenses) exercised in precipitating the Insurrection of 1676. In this single year, Lancaster was probably called on to pay not less than twelve thousand pounds of tobacco on account of its two Burgesses. The charges in Lower Norfolk for 1673 amounted to nine thousand, five hundred and fifty pounds; and in 1674, to ten thousand, seven hundred.<sup>1</sup> There is no reason to think that the average expenditure fell below this in the other counties.

In theory, the fixed salary was still gauged by the actual expenses which the Burgess was compelled to incur on his own account during his stay at Jamestown. These appear to have been extraordinarily high. The English Commissioners, Morryson, Berry, and Jeffreys, declared in a letter dated February, 1676-7, that one of the excuses offered for the high salaries of the Burgesses previous to the Insurrection was the exorbitant charge made by the innkeepers at Jamestown for all kinds of liquors, a course which they were probably tempted to pursue by the fact that the members of the General Court and of the House, together with the visitors in attendance during the sessions of those bodies, formed the great bulk of their customers. The Commissioners urged that the Assembly should insist that the prices prevailing at the inns should be materially lowered, as that would be the first step towards the reduction of the amount then granted to each Burgess for actual services.<sup>2</sup> This recommendation seems to have made the desired impression, for, not very long afterwards, the Burgess' salary was cut down to one hundred and twenty

<sup>1</sup> Lower Norfolk County Levies, Nov. 22, 1673, Oct. 22, 1674.

<sup>2</sup> Colonial Entry Book, 1766-7, p. 110.

pounds of tobacco a day, a curtailment of thirty pounds. Payment, however, was to begin two days before the House assembled, and was to continue two days after it had adjourned. The preamble of this Act admits that the former allowance had occasioned very serious complaint. A special sum was now granted in addition to defray the charges of the journey to and from Jamestown. In the case of the representatives from the Eastern Shore, this amounted to sixty pounds of tobacco a day, as it was necessary for them to hire a sloop and to engage at least two men to sail it. When a Burgess was from a county situated on one of the great rivers, he was allowed thirty-six pounds a day to meet the cost of a boat, whilst the members who came on horseback were to receive only ten pounds for the same length of time. This Act seems to have continued in force until the end of the century<sup>1</sup>

In spite of the general change for the better which this law introduced, the costs imposed on each county on account of its representatives in the House remained a serious public burden. In Middlesex, for instance, the levies for 1677 show that its citizens were compelled in that year alone, owing to the Assembly having met twice in the course of twelve months, to raise for the payment of the salaries and expenses of their two Burgesses the sum of twenty-five thousand pounds of tobacco.<sup>2</sup> In 1679, Col. William Byrd and his associate received seventy-five hundred pounds for their attendance at the last session of the House; in

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 398; *Present State of Virginia*, 1697-8, section vi.; Colonial Entry Book, Acts of 1676-7; see also vol. 1676-81, p. 163; Winder Papers, vol. ii., p. 149.

<sup>2</sup> Middlesex County Records, vol. 1673-80, folio p. 84.



1680, Byrd separately received this large amount. Four years later, William Randolph, who was now filling the same office, was, by the same county court, allowed fifty-three hundred pounds, and John Farrar, fifty-five hundred, whilst, in the following year, Randolph was allowed about sixty-one hundred pounds. These sums were used for the payment, not only of the two Burgesses' salaries, but also of all the expenses they had incurred for boats and rowers, and also for ferryage for their horses, and pasturage for them at Jamestown.<sup>1</sup> In Northumberland, in 1684, Peter Pressley was the recipient of twelve thousand pounds of tobacco, and Colonel Peter Knight of eleven thousand; in 1688, the total charge in this county for each Burgess came to sixty-three hundred pounds; in 1691, to ninety-nine hundred; and in 1697, to five thousand. In all these cases, the variations in the annual amounts disbursed were attributable to differences in the length of the several sessions of the Assembly.<sup>2</sup> In Elizabeth City county, in 1693, Capt. Anthony Armistead received for his services and expenses as a member of the House, the sum of sixty-two hundred pounds of tobacco<sup>3</sup>; in Essex, in 1692, Henry Awbrey and

<sup>1</sup> Henrico County Records, Levies, Dec. 23, 1679, Oct. 20, 1680; also vol. 1677-92, orig. pp. 288, 340. The following entries in Henrico County Levy for 1694 shows the number of men employed in the Burgesses' journeys to Jamestown by boat:

"To William Arrington for 8 Dayes rowing down the Burgesses in winter 86 lbs. of tobacco. To John Adkins for 6 days p. ditto sixty-five pounds. To Edmund Tylman for 8 days p. ditto eighty-six pounds. To Thomas Howel for seven days p. ditto seventy-five pounds of tobacco. To Philip Pursell 12 days p. ditto one hundred and twenty-nine pounds of tobacco." Henrico County Records, vol. 1688-97, p. 523, Va. St. Libr.

<sup>2</sup> See Northumberland County Records, Levies beginning Sept. 17, 1684.

<sup>3</sup> Elizabeth City County Records, Orders Dec. 5, 1693.

William Colston received respectively eight thousand pounds; and in 1695, each of the two Burgesses, fifty-one hundred.<sup>1</sup> In 1693, when Lancaster was represented by three members, the assessment for their benefit in the regular levy amounted in the aggregate for salaries alone to fifteen thousand, four hundred, and eighty pounds of tobacco; and in addition, they were paid two thousand pounds for the expenses of their servants, about thirteen hundred for ferryage fees, and twenty-one hundred for the maintenance of their horses. The total charge imposed on the county was estimated at twenty-one thousand pounds of tobacco, which at a low rate of valuation for that commodity signified an outlay of twenty-five hundred dollars in modern figures.<sup>2</sup>

Nor did these payments for salary and expenses complete the advantages incidental to the office of Burgess; he enjoyed certain special privileges which added materially to the benefits he received from the position. As early as 1623, it was provided that every member of the House should, during the progress of the session, be exempt from arrest at the instance of a creditor; and this right was to come into operation at least seven days before the Assembly convened, and was to last at least a week after it had adjourned. The object of this regulation was to afford the representative assurance of perfect freedom in going to and returning from Jamestown. If a creditor attempted to stop his passage, it worked an immediate forfeiture of the debt; and the sheriff, who, by the creditor's order, had served the warrant, rendered himself liable to punishment. The Burgess' first duty was to

<sup>1</sup> Essex County Records, Orders Nov. 12, 1692, Nov. 11, 1695.

<sup>2</sup> Lancaster County Records, Levy Dec. 14, 1693.

perform the public service expected of him, and whoever for any cause whatever made it impossible for him to do this, inflicted an injury on the public welfare deemed intolerable. This law, which had its origin in practical expediency, was re-enacted in 1631.<sup>1</sup>

It was declared, about twelve years later, to be illegal for any member of the House to be arrested in the interval between the date of his election and the end of the first ten days following the dissolution of the Assembly. The privileged period was thus very much extended. It is to be observed that the word "dissolution" is used in this Act, from which it is to be inferred that, in all those cases in which the House was simply prorogued, a not infrequent event, the exemption from arrest continued even during the time the members were at home. This conclusion is confirmed by the action of the Burgesses in 1659-60 in adopting a resolution that they would not claim the privilege during the "adjournment of the present session," but after the termination of the usual ten days would submit to any judgment or execution against their estates, provided that no attempt was made to interfere with their personal freedom.<sup>2</sup>

In 1662, when the Long Assembly was as yet in its infancy, this law was again enacted, and its scope was extended to the servants of the Burgesses also. There was a further modification in the terms of the original Act by the new provision that, if the period of adjournment was to be prolonged beyond a month, the right of exemption from arrest was to be suspended between sessions as soon as thirty days had passed since the

<sup>1</sup> Acts of 1623, Hening's *Statutes*, vol. i., p. 125; Randolph MS., vol. iii., p. 218.

<sup>2</sup> Hening's *Statutes*, vol. i., pp. 263, 444, 550.



last session had come to an end. Should a suit instituted against a Burgess in this interval be successful, then execution against his estate could not be pressed during the ten days preceding the meeting of the next Assembly, or during the session itself, or during the first ten days immediately following its termination.<sup>1</sup> This law was in operation in 1676; and an incident occurring in that year showed that it could not be violated with impunity. While Nathaniel Bacon, accompanied by forty persons, was making the voyage down James River in order to take his seat in the house, he was arrested by Captain Thomas Gardiner, of the *Adam and Eve*, acting under instructions received from Governor Berkeley himself, and the young tribune and his whole band of supporters were brought to Jamestown as close prisoners. Bacon was promptly released, and for this violation of his privilege as a Burgess, as well as for injuries done his sloop and its contents, Gardiner was compelled to pay a fine of seventy pounds sterling, equivalent in purchasing power to about fifteen hundred dollars at the present day; and he was also forced to submit to the humiliation of offering in public a full apology for the outrage on the fiery young leader, a requirement which must have cut Berkeley to the quick as the person really responsible for the arrest.<sup>2</sup>

A characteristic instance of the Burgess' right to claim exemption from all legal process within a certain interval of time occurred in Westmoreland in 1699:—in the course of this year, the sheriff of that county issued an attachment against two negro children, the property of Gawin Corbin, a member of the House,

<sup>1</sup> Revised Laws, 1662, Colonial Entry Book, vol. lxxxix., p. 34.

<sup>2</sup> Colonial Entry Book, vol. lxxx., No. 519, II.

which seems to have been in session at the time; this was promptly pronounced by that body to be a breach of privilege; and a special messenger was dispatched to the justices of the county to inform them of the House's resolution to that effect. Not satisfied with this declaration, the Assembly instructed the messenger to arrest the sheriff for his illegal act, and should he decline to pay a fine of three pounds sterling, to escort him to Jamestown to answer to the Assembly itself.<sup>1</sup>

The Burgess was invested with so much sacredness that it was considered to be as serious an offence to speak of him disrespectfully or scandalously as of the Governor or the members of the Council. "You are one of our Burgesses with a pox," Thomas Fowlkes remarked angrily and sneeringly to Hugh Yeo, a representative from Accomac county in 1666; and then added: "You go to Jamestown, and sett there, and sayes nothing, and comes back like a foole." These words were declared to be highly derogatory to the general reputation of Yeo as a member of the House, and Fowlkes had to suffer in consequence.<sup>2</sup> An insult offered to the Assembly as a whole was resented with even greater bitterness. Edward Prescott was, in 1660, summarily committed to prison for such an offence.<sup>3</sup> When Giles Bland, in his rage over Philip Ludwell's failure to keep an appointment to fight a duel with him, nailed his glove, by way of defiance, to the door of the Assembly's hall, Ludwell being a Burgess at this time, that body considered his conduct such a flagrant outrage on their dignity that they fined him one hundred pounds sterling; and, in addition, required

<sup>1</sup> Minutes of Assembly, May 23, 1699, B. T. Va., vol. lii.

<sup>2</sup> Accomac County Records, vol. 1666-70, folio p. 13.

<sup>3</sup> Henning's *Statutes*, vol. ii., p. 15.

him to make his submission before them, which, we are told, he did with a proud and haughty air.<sup>1</sup> In 1693, Thomas Rooke, for speaking abusively of the same body, and even more opprobriously of Mr. Kemp, one of its members, was sentenced to acknowledge the heinousness of his offence on his knees in the Assembly chamber, and in that humiliating attitude to beg the Assembly's pardon as well as that of Mr. Kemp; and at the conclusion of this performance, he was delivered into the custody of the messenger, who received orders to detain him until the House saw fit to release him.<sup>2</sup>

<sup>1</sup> British Colonial Papers, vol. xxxvii., p. 46.

<sup>2</sup> Minutes of Assembly, Nov. 2, 1693, Colonial Entry Book, 1682-95.



## CHAPTER XXV

### House of Burgesses : Place of Meeting

**D**URING the whole course of the Seventeenth century, the sessions of the General Assembly, unlike the terms of the General Court, seem to have been held at or near Jamestown. There is no record of the members of that body having, during that interval, convened elsewhere except on a single occasion; indeed, even if there had been any strong reason for their doing so, it would have been found practically impossible owing to the entire absence of accommodation in the way of inns and private lodgings for so considerable a number of men as from year to year formed the House of Burgesses.

At what place in Jamestown did the Assembly hold its regular meetings? The first representative body to convene in the Colony met in the choir of the church. This building, as already stated, was sixty feet in length and twenty-four in width, and was lighted by numerous windows. As the wood used in its interior consisted of cedar, a pungent but very sweet and pleasant odor must have constantly pervaded it. In the time of De la Warr, and, no doubt, afterwards, it was kept adorned in summer with clusters of flowers, and in winter with branches of the indigenous evergreens. It was probably the most spacious

structure to be found in Virginia in 1619, and it seems altogether appropriate that the first popular legislative body recorded in American history should have held its session under a roof consecrated by so many pious associations and cherished memories. The reasons which, in the beginning, induced the Burgesses to come together in this edifice probably operated for some years in influencing subsequent Assemblies to meet in whatever building served the same sacred purpose; after this, it is probable that the Burgesses for a time convened in the Governor's residence, or in one of the other houses belonging to him, or even in the principal tavern, as at a later date.<sup>1</sup>

It was not until the winter of 1636-7 that the subject of a separate State-House appears to have been brought forward with any practical definiteness. The English Government, in the instructions which they gave Harvey at that time, directed him to see that steps were taken by the General Assembly to build such a capitol; long so urgently needed. Under the influence of this injunction, a special tax of two pounds of tobacco per poll was imposed throughout the Colony. Writing in April, 1638, Secretary Kemp mentions the fact that George Menefie had been chosen to accompany to England the tobacco thus procured, in order, with the proceeds, to obtain the workmen required to construct the projected building.<sup>2</sup> The amount of that commodity secured by the first measure does

<sup>1</sup> Mr. Tyler, in his valuable and interesting work entitled *The Cradle of the Republic*, suggests that the Assembly during a part of Harvey's administration held its sessions in one of the houses belonging to him situated on the island.

<sup>2</sup> The tax was designed partly also, as already stated, to provide a fund for building a fort at Point Comfort; see British Colonial Papers, vol. ix., No. 97.

not seem to have been sufficient, for, in the winter of 1639-40, a second Act to the same effect was passed.<sup>1</sup> This second levy apparently afforded all the funds demanded for the purpose, for Harvey, writing to the Commissioners of Plantations the same month, declared that the building of the State-House would now be "performed with all diligence."<sup>2</sup> Grants and leases relating to lands situated in the island indicate that the Assembly was in occupation of a State-House of its own sometime previous to 1643.<sup>3</sup> This structure consisted in reality of three distinct houses joined together, all of which were built of brick, with an individual extension of forty feet in length and twenty in breadth.<sup>4</sup> The one used as a State-House stood in the middle of the group. About 1656, the structure having been rendered untenable by a conflagration, the Assembly was compelled to rent an apartment in the residence of a private citizen, for the use of which thirty-five hundred pounds of tobacco was annually appropriated.<sup>5</sup>

A second State-House was acquired by purchase, but in its turn was destroyed by fire. The Assembly was now more averse than ever to the use of private residences in holding its sessions. The rent asked was considered to be so exorbitant that it was openly

<sup>1</sup> Hening's *Statutes*, vol. i., p. 226.

<sup>2</sup> British Colonial Papers, vol. x., No. 5.

<sup>3</sup> See Tyler's *Cradle of the Republic*, p. 115. Mr. S. H. Yonge shows, apparently conclusively, that the first State-House was one of the triple buildings purchased from Harvey, in April, 1641; see *Va. Maga. of Hist. and Biog.*, vol. xii., pp. 46, 48. This building had no doubt been purchased with the tobacco designed at first for the erection of a new State-House.

<sup>4</sup> *Va. Maga. of Hist. and Biog.*, vol. viii., pp. 389, 408.

<sup>5</sup> Hening's *Statutes*, vol. ii., p. 12; Tyler's *Cradle of the Republic*, p. 115.



declared that, in two or three years, the charges would equal the cost of erecting a State-House. Moreover, the place of meeting was almost always a tavern, and the Assembly felt that it was unbecoming that the laws of the Colony should be adopted under a roof of so little dignity.<sup>1</sup> Influenced by these two objections,—the one practical, the other sentimental,—the Burgesses in October, 1660, requested Berkeley to draw up a plan for the construction of a State-House; and they agreed to reimburse him in full for all the expenditures which he might make in carrying through the work. In obedience to this injunction, Berkeley proceeded to impress ten men of the “ordinary sort of people” to erect the proposed building, but this must soon have been concluded to be impossible with such untrained mechanics, not to speak of the great pecuniary burden which their wages and maintenance were certain to impose on the taxpayers of the Colony.<sup>2</sup>

The following winter, the Assembly “taking into consideration the great charge brought yearly on the country by the want of a State-House for the Quarter Courts and Grand Assembly,” decided to secure the building of the structure by a “free and charitable subscription” as much less onerous than a public levy. The Governor and the members of the Council and of the House entered their names at the head of the list in order to set an example of public generosity for the people at large; and the justices of the county courts and the vestries of the different parishes were instructed to lay the matter before the inhabitants of the country situated within their jurisdictions, and

<sup>1</sup> See Orders of Assembly, March 23, 1661, Colonial Entry Book, vol. lxxxvi. For burning of second State-House, see *Va. Magazine of Hist. and Biog.*, vol. xii., p. 52.

<sup>2</sup> Hening's *Statutes*, vol. ii., p. 13.

to urge a liberal response in support of so laudable a scheme.<sup>1</sup> It is not probable that this appeal proved very encouraging, but nevertheless the General Assembly again authorized Berkeley to undertake the building of the proposed State-House. The Burgesses must have thought that sufficient funds were now to be obtained by public taxation, for they directed that thirty thousand pounds of tobacco should be raised at the next levy for this purpose, and that whatever more should be needed to complete the building should be appropriated when the second general levy was laid.<sup>2</sup>

This order resulted in nothing at the time, for, in the course of September, 1663, it was asserted that the country was still at a very heavy charge in renting apartments in private residences and taverns for the use of the General Court and the General Assembly. Again the latter body took steps to erect a State-House, the first of which was, for the third time, to appoint a committee to make the proper arrangements with Berkeley, chosen now as before to superintend the work.<sup>3</sup> The General Assembly was thoroughly in earnest, and, by 1666, the State-House had made sufficient progress to accommodate the members of that body, the General Court, and the Governor and Council, when they held their regular sessions.<sup>4</sup> This structure was still standing when the Insurrection of

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 38.

<sup>2</sup> Orders of Assembly, March, 1661, Colonial Entry Book, vol. lxxxvi.

<sup>3</sup> Randolph MS., vol. iii., pp. 286, 287.

<sup>4</sup> An Act of Assembly dated Nov. 9, 1666, refers incidentally to the "House going down to wait on the Governor's Honor." The Assembly met on the upper floor; the Governor and Council in a room below.

1676 broke out; and it was into its windows that Bacon, on a memorable occasion, threatened to shoot. It was finally burned down in the great conflagration which occurred when he abandoned the town just before retiring to Gloucester county to die.

In the winter of the following year, the General Assembly was compelled to hold its sittings at Green Spring, as there was no house standing in Jamestown itself in which its members might meet.<sup>1</sup> It was probably at this session that the Burgesses, overcome by discouragement over the town's complete obliteration, passed a resolution in favor of establishing the capital, and of building the new State-House, at Tyndall's Point, as the spot combining the greatest number of advantages for the country at large.<sup>2</sup> Before the end of the same year, the General Assembly had convened at the Middle Plantation,<sup>3</sup> which the people of York county had petitioned that body to adopt for its permanent place of meeting; it is quite probable that the Burgesses had consented to come together there, at least once, in order to find out whether it offered enough to justify such a step. Left to their own judgment, they would have abandoned Jamestown as long open to serious objection on account of the insalubrity of its air, but the English Commissioners, Morryson, Berry, and Jeffreys, were strongly opposed to such a course, and on their earnest recommendation, supported by the English Government's, the General Assembly in the end determined to restore the ancient capital and to rebuild the State-House there. In

<sup>1</sup> Henrico County Records, vol. 1677-92, orig. p. 117; Winder Papers, vol. ii., p. 90; Colonial Entry Book, 1675-81, p. 151.

<sup>2</sup> Hening's *Statutes*, vol. ii., p. 405.

<sup>3</sup> *Ibid.*, p. 421; Henrico County Records, vol. 1677-92, orig.



April, 1677, the sittings were resumed at Jamestown, and once more the Burgesses found themselves under the necessity of meeting in a tavern.<sup>1</sup> Seven years afterwards, they had secured, for their own occupation, the ground floor of Mrs. Ann Macon's residence, whilst the floor overhead was divided off into the clerk's office, chambers for the several committees, and apartments for the Council and General Court; practically, the entire space of the house seems to have been engaged; and in return for granting it for these public uses, Mrs. Macon was paid annually the sum of twelve thousand pounds of tobacco.<sup>2</sup>

A contract was drawn up in 1684 for the erection of the new State-House, and the parties to it were, on the one side, the Governor and the Speaker, acting for the General Assembly, and on the other, Philip Ludwell, acting for himself. Its provisions were submitted on May 22d to the House, and by that body approved.<sup>3</sup> The next question to arise was as to how the fund needed to meet the cost of the building should be procured; and it seems to have been obtained, at least in part, by an import tax on liquors.<sup>4</sup> By October 8th of the following year, the structure had made such progress towards completion that the

<sup>1</sup> Tyler's *Cradle of the Republic*, p. 52.

<sup>2</sup> Minutes of Assembly, May 15, 1684, Colonial Entry Book, 1682-95.

<sup>3</sup> *Ibid.*, May 22, 1684, Colonial Entry Book, 1682-95, p. 209.

<sup>4</sup> Colonial Entry Book, 1682-95, p. 298; see discussion of a bill to tax liquors recorded in 1684, Colonial Entry Book, 1682-98, p. 176. The State-House seems to have been known popularly as the "General Court-House." Nicholson wrote of the "unlucky accident of ye General-Court House being burned down, in which building were several offices and House of Burgesses also sat." This was in 1698-9; see letter dated Feb. 4, 1698-9, B. T. Va., vol. vi.

Burgesses requested the Governor to assign the chamber over the porch to their clerk for use as an office, a purpose which it would serve most conveniently, since the apartment was situated next to the one reserved for themselves. The corresponding room in the former State-House had been occupied by the Secretary, and this fact had caused certain inconveniences thought to be injurious to the public welfare; for instance, not only did the Secretary's assistants catch every word spoken in the Assembly Hall, but strangers, under pretence of business, crowded into the Secretary's office, in order really to listen to the Burgesses' debates.<sup>1</sup> Information thus obtained was spread far and wide through the different counties.

In 1691, the Assembly convened at Green Spring, apparently because the State-House was too much out of repair to allow a meeting to be held conveniently within its walls.<sup>2</sup> Two years later, the Governor and Council, with great earnestness, urged the restoration of the building to its former perfect condition, but quite probably little was done, and in 1698, it was entirely destroyed by fire, the fourth State-House to perish in this manner since the foundation of the Colony. As it was suspected at the time that the structure had been reduced to ashes by the torch of an incendiary, a committee was appointed to make a careful investigation; but when its report was submitted to the Attorney-General, that officer decided that the proof

<sup>1</sup> Colonial Entry Book, 1682-95, p. 307. On October 5, Auditor Bacon was ordered to pay Ludwell £400 in consideration of the rebuilding of the State-House. A bond was taken for its completion; see Colonial Entry Book, 1682-95, p. 298.

<sup>2</sup> Northumberland County Records, Orders Aug. 20, 1691.

was insufficient to convict the man who was charged with the crime.<sup>1</sup>

The first act of the Burgesses now, as after the destruction of the preceding State-House, was to pass a resolution in favor of the capital's removal from Jamestown; and the advisability of this course was again based on the ground that a more healthy site was desirable. Andros, who was then Governor, had promptly announced the disaster to the English authorities, and in doing so had declared that the building could not be replaced for a sum less than two thousand pounds sterling, an estimate seemingly excessive in the light of the purchasing power of this amount of money at that time.<sup>2</sup>

As soon as the first General Assembly to meet after the conflagration had occurred came together, the question of building a new State-House was taken up with great earnestness. The earliest point discussed was as to the character of the tax which should be imposed in order to secure the fund required; and it was decided on May 8, 1699, that each white servant imported into the Colony should, for this purpose, be made, on his arrival, subject to a duty of fifteen shillings, and each slave to a duty of twenty. Servants of English birth, however, were after debate excepted from the burden of this heavy charge; and the Act itself was to cease to operate at the end of three years.<sup>3</sup> Ten days afterwards, the House adopted a resolution favorable to the selection of the Middle Plantation

<sup>1</sup> Minutes of Council, Oct. 20, 1698, B. T. Va., vol. liii. These minutes mention the fact that the State-House was burned down on that day. The man accused was Arthur Jarvis.

<sup>2</sup> B. T. Va., 1698, vol. vi., p. 413.

<sup>3</sup> Hening's *Statutes*, vol. iii., p. 193; Minutes of Assembly, May 8, 1699, B. T. Va., vol. lii.



as the site of the future capital; and within twelve hours, the Governor and Council, sitting as the Upper House, had given their assent. It was, no doubt, in some measure, due to Nicholson's influence that Middle Plantation was chosen, as he was anxious to advance the new College's welfare by making that place the scene of the General Assembly's annual meeting, and thus the centre of the Colony's political and social as well as intellectual interests. The Governor indeed declared that the value to the institution of the Assembly's presence would be equal to a gift of two thousand pounds sterling.<sup>1</sup>

The next step was to adopt a plan for the projected State-House. The first draft seems to have been drawn by the Council, and on May 23d, it was submitted at a conference of the two committees representing respectively the Upper and Lower Chamber. On the same day, the plat agreed upon at this conference was laid before the Burgesses<sup>2</sup>; who three days later, accepted it finally. The site for the building had already been chosen by the two Houses. The specifications of the building itself called for a foundation constructed of brick partitions having a thickness of four bricks as far as the surface of the ground; and from thence, as far as the water table, the walls, still of brick, were to maintain a uniform thickness of three and a half. From the water table to the top of the first story, the thickness was not to exceed three bricks; while from the top of the first story to the top of the second, not to exceed two and a half. There were to be really two buildings standing parallel to each other,

<sup>1</sup> Minutes of Assembly, May 18, 1699, B. T. Va., vol. lii.; see Nicholson's address to the House May 18, 1699, Minutes of Council, B. T. Va., vol. lii.

<sup>2</sup> Minutes of Assembly, May 23, 1699, B. T. Va., vol. lii.

but connected by a gallery of the same height resting upon pilasters and constructed also of brick, with corresponding degrees of thickness throughout. This gallery was to be crowned with a cupola. The roofs of the two main buildings, which were to be covered with cypress shingles, were to be hipped, and their sloping surface was to be broken by dormer windows. One of these two buildings was to be reserved for the use of the Council and the General Court; the other for the use of the House of Burgesses; and the offices to be attached to each of these bodies were to be situated next to its own chamber.

The committee entrusted with the revisal of the laws was authorized to enter into the necessary contracts for the erection of the buildings, and to make whatever other provision should be required for completing the undertaking. They were impowered, for instance, to procure from England iron work, glass, paint, and the like, all unobtainable at this time in Virginia. To prevent a temporary lack of funds from impeding the progress of construction, the Treasurer was ordered to pay all bills which should be presented during the interval to precede the next meeting of the Assembly; conditional, however, upon their total amount not exceeding fifteen hundred pounds sterling; and each bill also had to be first approved by the committee, and the warrant directing payment signed by the Governor.

The Act authorizing the erection of a new capitol passed the House of Burgesses on the sixth day of June, 1699. Nicholson soon issued his proclamation announcing the time and place when and where the committee having charge of the whole undertaking would hold its first meeting; the interval between the

sixth and ninth of September was designated as the time, and Jamestown as the place; and every member of the committee was ordered to be present to receive and consider any proposition which might be made looking to the construction of the buildings. With a view to spreading far and wide information as to the committee's willingness to entertain bids, the proclamation was publicly read at every church, chapel-of-ease, court-house, and other public place situated in the Colony.<sup>1</sup>

So confident were the authorities of the early completion of the new capitol, that, on October 24th, the Attorney-General received instructions from the Governor and Council to prepare a proclamation which should announce that, after May 10, 1700, the sessions of the Assembly and the terms of the General Court would be held in the City of Williamsburg.<sup>2</sup>

<sup>1</sup> For these various details see B. T. Va., vol. viii., Doct. 54; Minutes of House of Burgesses, May 25, 1699, B. T. Va., vol. lii.; *ibid.*, June 6, 1699, B. T. Va., vol. lii.

<sup>2</sup> Minutes of Council, Oct. 24, 1699, B. T. Va., vol. lii.



## CHAPTER XXVI

### House of Burgesses—Hour of Meeting and Attendance

WHETHER they met in the morning or at night, the Burgesses assembled at the tap of the drum. In the public levy for 1682, the tithables of James City county were assessed for the benefit of Robert Wilson, who had acted in the capacity of drummer to the House for a period of two years and a half.<sup>1</sup> At a later date, Edward Ross, the gunner employed in the fort at Jamestown, was rewarded for the like service by the payment to him of twenty-two pounds sterling; and he was then discharged from further duty.<sup>2</sup> In 1631, the Upper and Lower House, before meeting in their respective chambers, attended in a body prayers, which were, no doubt, held in the church; this occurred at the third beating of the drum, an incident that marked the end of the first hour following sunrise.<sup>3</sup> Sometimes, the Burgesses convened as early as half past five in the morning; but the usual hour for assembling ranged from seven to eight o'clock.<sup>4</sup> It should be remembered that the members of the House

<sup>1</sup> Colonial Entry Book, 1682-95, p. 80.

<sup>2</sup> *Ibid.*, 1680-95, p. 379.

<sup>3</sup> Randolph MS., vol. iii., p. 217.

<sup>4</sup> Minutes of House of Burgesses, April 17, 18, May 21, 1691, B. T. Va., No. 28.

belonged exclusively to the planting class, who were in the habit of breakfasting not long after dawn so as to be able to superintend in person the agricultural operations of their estates before the heat of the day had fully set in. Nor were there any extraordinary amusements in the social life of Jamestown which are likely to have kept the Burgesses out of their beds for many hours after the sun had gone down, and thus led to late rising next morning. Not infrequently, however, when public affairs were pressing, or the members were anxious to return to their own homes to look after a crop of tobacco recently planted, a meeting of the House would take place after dark by candle light; and these sittings very often were prolonged until a late hour.

A mace and sword formed a part of the paraphernalia of the House. The King himself, in 1678, presented the Burgesses with such emblems of Parliamentary state and dignity.<sup>1</sup> These "ornaments and utensils" as they were designated, were, during the intervals of adjournment, in the charge of a special custodian; Joseph Copeland was, in 1688, entrusted with this duty, an indication that he enjoyed a reputation for extraordinary carefulness, since there were probably no articles of value belonging to the public regarded as more sacred than the mace and sword.<sup>2</sup> During the hours the House was sitting, these emblems of authority always rested on the table in front of the Speaker.

The daily proceedings of the House began with prayer; and for this spiritual service, a chaplain,

<sup>1</sup> British Colonial Papers, vol. xlii., No. 152; Colonial Entry Book, 1676-81, p. 263.

<sup>2</sup> Minutes of Assembly, Colonial Entry Book, 1682-95, p. 602.

nominated by the Speaker and approved by the Governor, was permanently employed.<sup>1</sup> The invocation was followed by the roll call. The House was very strict in requiring the attendance of all its members at the opening of the session. An Act passed in 1659-60 provided that a Burgess who failed to be present on the day appointed by the writ for the House's assembling should be fined three hundred pounds of tobacco for every twenty-four hours' absence, unless he could offer an acceptable excuse for his apparent delinquency.<sup>2</sup> This regulation seems to have been repeatedly renewed. One of the principal reasons for its adoption was that the election of a Speaker might be delayed if the absent members, when the session began, were numerous; or a Speaker might be chosen who would not really represent the preference of a majority of the House, an act certain to arouse much ill-feeling, to the detriment of the public business.<sup>3</sup> At the first sitting, it was customary for the letters addressed to the Speaker in explanation of the writers' absence to be read and approved or rejected.<sup>4</sup> Sometimes, the explanation given was regarded as aggravating the offence. In 1691, James Bray, the Burgess elected by James City, neglected to attend at the opening of the session, and so unbecoming did the House consider his excuse to be, that they instructed the Speaker to issue a warrant for the delinquent's arrest; and he seems to have been detained in the sheriff's custody until he offered a hearty apology

<sup>1</sup> Rev. Cope Doyley filled the office in 1696; see *Minutes of House of Burgesses*, Sept. 30, 1696, B. T. Va., vol. lii.

<sup>2</sup> *Hening's Statutes*, vol. i., p. 532.

<sup>3</sup> *Ibid.*, vol. ii., p. 107; *Colonial Entry Book*, vol. lxxxix., p.

34.

<sup>4</sup> *Calendar of Va. State Papers*, p. 52 et seq.



for his conduct. When Bray did attend a sitting, he was prevented by scruples of conscience from taking the new oath prescribed by Parliament, and was therefore disabled from serving.<sup>1</sup>

Equal strictness was shown by the House in enforcing the attendance of its different members from day to day. One of the first regulations touching this point, adopted as early as 1631, imposed a fine of two shillings and sixpence for every failure to be present at a sitting.<sup>2</sup> Thirty years afterwards, the penalty was, under special circumstances, increased to one hogshead of tobacco, an evidence of the importance attached to the performance of the Burgess' duties. This high penalty would seem excessive but for the fact that it could only be imposed on Monday, for it was really designed to discourage members from leaving town over Sunday, with the intention of returning in time for the beginning of the next week's sittings; it was probably anticipated that the Burgesses absenting themselves even for this short period might be unavoidably prevented by the weather or some accident from appearing at the Monday meeting.<sup>3</sup>

Any Burgess venturing to go to his home during the session, without first obtaining the House's consent, was looked upon as guilty of an act of contempt. When the Assembly reconvened in May, 1684, it was found that five of its principal members, namely, Major Henry Whiting, of Gloucester county, Abraham Weekes and Richard Perrott, of Middlesex, Captain

<sup>1</sup> Minutes of House of Burgesses, May 12, 1691, B. T. Va., No. 28.

<sup>2</sup> Randolph MS., vol. iii., p. 217.

<sup>3</sup> Acts of Assembly, 1663, Randolph MS., vol. iii., p. 287. It is probable that on Saturday, which was a half holiday, as in England, the Assembly did not sit.

David Fox, of Lancaster, and Major Charles Scarborough, of Accomac, were not present to respond at the roll call; and it was shown that they had taken their departure without first securing the necessary license. A resolution was promptly adopted requiring the sheriffs of these counties to collect from each of these Burgesses, for the commission of so grave an offence, a fine of one thousand pounds of tobacco.<sup>1</sup> Mr. Taylor and Mr. Goodrich, having absented themselves without permission for the purpose of revisiting their estates, the messenger of the House received orders to inform them that they would not be allowed to take their seats again without first applying to the House for admittance; and they were only restored after they had submitted an apologetic petition.<sup>2</sup> So rigidly conscientious was the House in enforcing its members' attendance, that it disclaimed possession of the right to relieve a Burgess of the duty of being present at its sittings even when his constituents had formally requested that this privilege should be granted to him. The House justified this position by asserting that such a Burgess had only been authorized to take his seat after a "legal and deliberate examination of his returns"; and when that seat had been once taken, it could not be vacated by the House's action unless the occupant had been found guilty of some heinous offence; in which event, it would be necessary to replace him by the election of another Burgess. The question immediately involved at the time this an-

<sup>1</sup> Minutes of Assembly, May 24, 1684, Colonial Entry Book, 1682-95, p. 216.

<sup>2</sup> Minutes of House of Burgesses, Oct. 10, 1696, B. T. Va., vol. lii. A similar petition signed by nine members will be found in the Minutes for April 29, 1695; see Colonial Entry Book, 1682-95.

nouncement was made, was as to whether a county had a right to reduce its representation by obtaining the Assembly's consent to dismiss one of the county's members.<sup>1</sup>

<sup>1</sup> Acts of Assembly, Oct. 29, 1666, Randolph MS., vol. iii., p. 296. The county of Isle of Wight had petitioned the House to dismiss one of the county's three members, which practically would have reduced its representation to two. This was desired because it would curtail the county's expenses on its Burgesses' account one third.



## CHAPTER XXVII

### House of Burgesses: Its Officers

THE most important of all the offices connected with the House was the Speakership. By whom and in what manner was the incumbent of this office chosen? When the first General Assembly convened in 1619, the Governor and Council occupied seats in the same apartment as the Burgesses; practically, the two Houses, on this occasion, constituted one body, although after prayer the Burgesses retired into the middle part of the church, where they were called to order, and took the oaths of allegiance and supremacy.<sup>1</sup> It is probable that their Speaker was chosen immediately after these oaths had been subscribed to; in which event, it is not likely that the Governor and Council had any voice in his nomination. As soon as the Upper House ceased to sit in the same room as the House of Burgesses,—which seems to have occurred at an early date,—there is no reason to think that the Governor and Council, as the Upper Chamber, participated even indirectly in the Speaker's election, except possibly during the period of the Commonwealth.<sup>2</sup>

<sup>1</sup> Minutes of Assembly, 1619, p. 11, *Colonial Record of Virginia*, State Senate Doct., Extra, 1874.

<sup>2</sup> "Ordered that Lieut.-Col. Fletcher etc. attend the Governor and Council and request of them their reasons wherefore they cannot join with us, the Burgesses, in the business of the Assembly about

It was the Burgesses' custom to assemble, and then, in a body, to wait on the Governor in order to request his permission to choose a Speaker; they then returned to their own chamber and elected that officer; and very soon afterwards a committee was nominated to inform the Governor of the fact, and also of the Burgesses' readiness to wait on him again with their new Speaker at their head. As a rule, the Governor in reply sent them word that he would receive them at whatever hour would harmonize with their convenience; and at the hour appointed, the Burgesses would make their appearance, and their Speaker's election would be formally approved. So soon as this part of the ceremony was completed, that officer would, in the House's name, beg for the reconfirmation of all the privileges enjoyed by previous Assemblies; and to this the Governor would graciously assent. When Robert Carter, of Lancaster county, was chosen Speaker in 1699, and in that character presented to Nicholson, he declared that, in making the usual prayer, he was giving voice to the wishes, not only of the Burgesses themselves, but also of the whole commonalty of Virginia. The most important privileges enumerated by Carter

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the election of Lieut.-Colonel Walter Chiles for Speaker of this Assembly, Lieut.-Colonel Chiles having by plurality of votes been chosen Speaker of the Assembly"; Acts of 1653, Randolph MS., vol. iii., p. 247. Governor Bennett, however, expressly disclaimed any intention to encroach on the Assembly's right to choose a speaker. The following was the Burgess' oath in 1652: "You and every of you shall swear on the Holy Evangelists and in the sight of God to deliver your opinions faithfully and honestly according to your best understanding and conscience for the general good and prosperity of this country, and every particular member thereof, and do your utmost endeavor to prosecute that, without mingling with it any particular interest of any person or persons whatsoever"; Randolph MS., vol. iii., p. 245.

in his address on this occasion were free access to the Governor's presence in order to offer a petition or to express complaints, liberty of debate on the floor of the House, and exemption from arrest for the members and their body servants during a specified interval.<sup>1</sup>

It happened at times that the Burgesses found some difficulty in electing a Speaker. In 1699, there was a delay of several days in making a choice. Nicholson, becoming impatient, dispatched a message to the members that they must not leave their chamber until they had selected their presiding officer, as every hour this was deferred simply increased the charge which the Assembly's sittings imposed on the taxpayers. The reply was at once returned that each of two candidates had obtained twenty votes, and only the arrival of lagging Burgesses could finally decide the contest. This incident clearly reveals the need of the stringent measures adopted to ensure the prompt

<sup>1</sup> See an account of Colonel Thomas Milner's election to the Speakership in 1691, Minutes of House of Burgesses, April 17, 1691, B. T. Va., No. 28. An account of the election of Robert Carter is recorded in Minutes of Council, May 2, 1699, B. T. Va., vol. lii. See for an earlier period, Randolph MS., vol. iii., p. 281. It was not often that the Governor ventured to interfere with the choice of any particular member for Speaker, and when he did so, it was for some very good public reason. An instance occurred in 1653, as the following communication from Governor Bennett shows: "Gentlemen, not to encroach on right of Assemblies in the free choice of Speaker, nor to undervalue Lieut.-Colonel Chiles, it is my opinion, and Council concurring therein, that it is not so proper or so convenient at this time to make choice of him, for there is something to be agitated in this Assembly concerning a ship lately arrived in which Colonel Chiles had some interest, for which and some other reasons we conceive it better at present to make choice of some other person whom you shall agree upon.

"Your real servant,

"RICHARD BENNETT."

Randolph MS., vol. iii., p. 247.



attendance of members at the opening of the session.<sup>1</sup>

The office of Speaker was a lucrative as well as an influential one. In 1619, when the first Assembly to meet in Virginia was about to close its sittings, it entered an order that there should be imposed on every freeman and man-servant to be found in the Colony at that time a tax of one pound of tobacco, with the object of ensuring an ample reward to the Speaker, clerk, and sergeant of the House for their faithful performance of the duties of their several positions.<sup>2</sup> Later on, the Speaker's salary was obtained in the same manner as that of the Governor:—every county was required to contribute towards his remuneration in proportion to the number of its tithables; for instance, in 1668, York was assessed for this purpose to the extent

<sup>1</sup> Minutes of Council, April, 1699, B. T. Va., vol. lii. The following address delivered by William Randolph when elected Speaker in 1698, shows how little the manner of returning thanks for such an honor differs from century to century. The words might well have been uttered at the present day: "Gentlemen, I acknowledge it a great honour conferred on me by being chosen Speaker of the House, but on the other side, I must confess my own disability. My capacity is not large enough to comprehend the weighty matters incident to this chair, the difficulties of which I am ye more encouraged to undertake when I consider how many worthy members are here present, and have hopes of the assistance of every one of them; and, therefore, do entreat you, gentlemen, that if any lapse of the tongue or mistake in any other matters shall any time hereafter happen through my weakness, that you will be pleased not to impute it to an error of the mind and will, for I can assure you, gentlemen, that I have a settled resolution and purpose to serve the House with all faithfulness, integrity, and diligence, that thereby as much as in me lies, the affairs we are here met about may be carried and proceeded in with that dispatch and consideration as may best serve the good and welfare of this Government"; Minutes of House of Burgesses, Sept. 30, 1698, B. T. Va., vol. lii.

<sup>2</sup> Proceedings of Assembly of 1619, *Colonial Records of Virginia*, State Senate Doct., Extra, 1874.

of two thousand pounds of tobacco, and in 1682, to the extent of six thousand and thirteen pounds.<sup>1</sup> If the same proportion was, during these two years, maintained throughout the Colony, the emoluments of the Speaker's office were very considerable.

Secondary to the Speakership, but nevertheless an office of great importance, and one much sought after in case of a vacancy, was the clerkship of the House. The clerk seems to have been elected immediately after the ceremonial visit which it was the custom of the Burgesses and their Speaker to make to the Governor when the Speaker himself had been nominated. The Governor's approval of the choice of a clerk had also to be obtained; and for this purpose, a committee was always appointed to inform him of the new incumbent's name as soon as he was selected. It is not improbable that, when there was a delay in the election of a Speaker, the clerk was chosen first.<sup>2</sup> Howard claimed that he had the right to remove the clerk and to replace him with another, should he see fit to do so. He was very anxious to establish the rule that this officer should be nominated by the Crown and paid out of the royal revenues. The object to be gained by the proposed change was simply to make the clerk a creature of the Governor and his Council, and the reporter to

<sup>1</sup> York County Records, vol. 1664-72, p. 288, Va. St. Libr.; vol. 1675-84, orig. p. 438.

<sup>2</sup> See Minutes of House of Burgesses, April 17, 1691, B. T. Va., No. 28. Culpeper stated that, before himself, no Governor had ever "appointed" a clerk of the House. It seems that Robert Beverley was "recommended" to him by the House to be their clerk, and this action was seconded by the Council. Practically, this simply meant that the clerk was elected by the House, subject now for the first time to the approval of the Governor. It seems unlikely that the first recommendation came from that official; see British Colonial Papers, vol. xlvii., No. 105.

them of the House's most private proceedings; it was to convert the confidential officer of that body into a corrupt spy; and to expose him permanently to the just suspicions of the men in whose presence he would sit from day to day. The mere suggestion of placing him beyond the Assembly's authority shows how far Howard was prepared to go in depriving its members of all their privileges. If he succeeded, as he boasted he would do, in taking away the clerk's dependence on "his great masters, the House of Burgesses," it was only for a time, since in 1691 that body is found electing their clerk with the same formalities as had been observed before Howard's arrival.<sup>1</sup>

The chief duty of the clerk consisted of making and keeping full and accurate minutes of the Burgesses' proceedings; and it was also, as a rule, obligatory upon him to deliver a copy of these minutes to any person asking for it and ready to pay the amount prescribed by law to be due for the transcription.<sup>2</sup> A similar copy had to be sent by the clerk, at the close of each session, to the Commissioners of Trade and Plantations.<sup>3</sup> In 1682, Robert Beverley, who was filling the office at this time, declined to deliver to the Governor and Council on their peremptory order a copy of the journal; and in justification of his refusal, he alleged that he was the mere servant of the House, and could not, without their leave, comply with the demand. A dispute had arisen between the Governor and

<sup>1</sup> See Bancroft's *History of the United States*, vol. ii., p. 253; see also Hening's *Statutes*, vol. iii., pp. 40, 41, 550; and British Colonial Papers, vol. lvii., No. 46.

<sup>2</sup> Orders of Assembly, April 10, 1682, Colonial Entry Book, vol. lxxxvi., p. 370.

<sup>3</sup> In 1692, Peter Beverley is found doing this; see B. T. Va., 1692, No. 100.



Burgesses as to whether the clerk should be sworn as the recording officer of the General Assembly, or merely of the House of Burgesses, in harmony with the precedent set by the House of Commons.<sup>1</sup>

When a fourth State-House was erected at Jamestown after the destruction of the third during the Insurrection of 1676, a room in the new building was reserved for the use of the clerk of the Assembly. It is probable that, as a matter of common convenience, this officer was, throughout the century, assigned an apartment in the immediate vicinity of the Burgesses' hall, and that it was here that he kept the records, books, and papers placed in his custody. There seems however, to have been no regulation forbidding him to remove any document to his own residence. When Robert Beverley died, after filling the office for some years, a committee, composed of his two most prominent neighbors in Middlesex county, where his home was situated, Ralph and Christopher Wormeley, was appointed to receive all the records of the Assembly then in his widow's possession, and to convey them to Jamestown for delivery to his successor.<sup>2</sup>

Of the officers of the House, the third in importance was the messenger, who seems to have been really a sergeant-at-arms, although not always so referred to by name. As we have seen, such an officer so designated was attached to the Assembly of 1619. The place of the sergeant or messenger was at the bar of the House, where he was liable at any time to have to answer to the Speaker's call.<sup>3</sup> This call generally related to the arrest of members who had committed

<sup>1</sup> Colonial Entry Book, 1680-95, pp. 9, 53, 153, April, 1682.

<sup>2</sup> *Ibid.* p. 238.

<sup>3</sup> Minutes of Assembly, 1619, p. 11, *Colonial Records of Virginia*, State Senate Doct., Extra, 1874.

some offence, such, for instance, as a peculiarly serious breach of the rules, or neglect to attend the sittings of the House; in either event, the delinquent was accompanied to the bar by the sergeant, who remained at his elbow during the course of the examination that followed. In 1695, as many as nine members were in the custody of the messenger, as the sergeant seems to have been now generally known; and he was ordered to bring them before the House so that they might have an opportunity of making their defence. This they appear to have done in the form of a petition.<sup>1</sup> In cases attended with a high degree of responsibility, the messenger perhaps was dispatched to a distance from Jamestown; but under ordinary circumstances, the demands upon his attention in the House were so constant and exacting, that it is quite probable that special messengers were engaged when the duty to be discharged was one requiring absence from the capital for some length of time. This is proven by the large sums disbursed during some years as remuneration for the performance of special missions. The messenger seems to have been recommended by the Governor; for instance, in 1696, Andros named John Chiles as a proper person "to attend the House during the present session of the Assembly." Chiles, summoned to the bar, was informed that he was accepted by the Burgesses as their messenger, and that his presence would be required at each sitting. In return for his services in that capacity, he was to receive a salary of twenty-five pounds sterling.<sup>2</sup>

<sup>1</sup> Minutes of Assembly, April 29, 1695, Colonial Entry Book, 1682-95.

<sup>2</sup> Minutes of House of Burgesses, Sept. 28, 1696, B. T. Va., vol. lii.; Minutes of Council, June 15, 1696, B. T. Va., vol. liii.

In the course of 1682, the House had use for as many as four door-keepers at one time, and the like was also the case in 1698; from which it is to be inferred that this was the usual number engaged in its service.<sup>1</sup> It is not improbable that so many were employed because it was necessary that there should be door-keepers for the committee rooms as well as for the Assembly hall; and it is possible also that the same men were expected to act as pages, and to keep the several apartments in a state of good order and cleanliness.

In addition to the various persons whom we have mentioned as being present in one capacity or another at the daily sittings of the Assembly, the only ones attending formed the guard assigned for that body's use during the session, although permanently attached to the Governor's suite. This squad of soldiers was under the command of an officer appointed by the Burgesses themselves<sup>2</sup>; and their presence was required, not so much to promote the Assembly's dignity as to enforce the orders given to the messenger or sergeant-at-arms in case there was any show of resistance.

<sup>1</sup> Colonial Entry Book, 1682-95, p. 80; Minutes of House of Burgesses, Sept. 30, 1698, B. T. Va., vol. lii.

<sup>2</sup> Orders of Assembly, Sept. 10, 1663, Colonial Entry Book, vol. lxxxvi.



## CHAPTER XXVIII

### House of Burgesses: Procedure and Committees

THE Burgesses' procedure was modelled on that of Parliament at this period. In a speech delivered by William Fitzhugh before the House, in 1682 (and there were few better informed men in the Colony than he), he declared that the only deviation from the procedure of the English Commons lay in the manner in which appeals were settled; and he urged that, in order to bring the Assembly's rules into complete harmony with those of Parliament, its great prototype, the Council, in its character as the Upper Chamber, should be represented in the composition of the House Committee on Private Claims. After the right of appeal to the Assembly was so much modified,—a radical change which occurred about the time Culpeper became Governor,—the procedure of the Burgesses did not differ in any important respect from that of the English Commons; and this was true of its regulations for extraordinary as well as for ordinary occasions; for instance, when Fitzhugh himself was impeached by the Assembly, the rules shaping the course of his trial were precisely the same as those enforced in Parliament under similar circumstances.<sup>1</sup>

<sup>1</sup> Letters of William Fitzhugh, April 5, 1687; for Fitzhugh's reference to House of Commons, see Minutes of Assembly, April 24, 1682, Colonial Entry Book, vol. lxxxvi., p. 377.

Describing the House's procedure at the end of the century, Beverley declared that it was based on the closest imitation of the procedure so long followed by the English House of Commons.<sup>1</sup> Practically, therefore, from 1619 to 1700, the latter had served as the great model for the corresponding legislative body in Virginia.

So soon as the House had settled down to the business of the session, it chose the members of the committees upon which fell the brunt of its work. It would appear that the number of committees appointed by the first Assembly did not exceed two; but at a later date, the number had been increased to three; which consisted of the Committee to examine the Election Returns, the Committee on Propositions and Grievances, and the Committee on Claims.<sup>2</sup> So important were these several committees of the House considered to be that each was permitted to employ its own clerk, whose salary was, in 1656, fixed at so high a figure as fifteen hundred pounds of tobacco<sup>3</sup>; and so much larger had that salary become twenty years later, that it caused very grave popular discontent. The English Commissioners, in describing the Colony's condition just before and after the Insurrection of 1676, stated that each clerk was then paid as much as four thousand pounds of tobacco, although, not infrequently,

<sup>1</sup> Beverley's *History of Virginia*, p. 190. Among the instructions given to Jeffrey Jeffreys, the agent of the Colony in England in 1691, was the following: "To supplicate their Majesties to confirm to Virginia ye authority of ye General Assembly consisting of ye Governor, Council, and Burgesses as near as may be to ye model of ye Parliament of England," etc.; Minutes of House of Burgesses, May 22, 1691, B. T. Va., No. 23.

<sup>2</sup> Minutes of Assembly, April 24, 1688, Colonial Entry Book, 1682-95, p. 502.

<sup>3</sup> Randolph MS., vol. iii., p. 272; Winder Papers, vol. ii., p. 149.

their respective tasks during a session did not exceed twenty lines of writing. In the report which they drew up, the Commissioners urged that, instead of employing a clerk to prepare, for the information of the House, a full account of his committee's work, its chairman should prepare that account himself, and thus do away with the need of any expenditure in salaries.<sup>1</sup> No change followed from this apparently wise recommendation, for, in 1682, each clerk was in receipt of a salary that even exceeded four thousand pounds of tobacco.<sup>2</sup>

Owing to lack of room in the different buildings in which the Burgesses themselves sat, the committees generally were forced to seek a place of meeting in a private residence; for instance, in 1682, accommodation was found in the home of Thomas Clayton; and for this, he was paid as much as two thousand pounds of tobacco.<sup>3</sup> During 1695, the Committee on Propositions and Grievances occupied an apartment in William Sherwood's house; and the Committee on Private Claims, one in the house of John Brodnax.<sup>4</sup>

What were the particular duties of the respective committees? The work of the Committee on Elections was, as a rule, the simplest of all:—it was to pass on the credentials of every newly returned member. This committee was appointed immediately after the

<sup>1</sup> Winder Papers, vol. ii., p. 149. In 1688, the clerk of the Committee on Propositions and Grievances was Peter Beverley; and of the other two committees combined, Henry Randolph; both citizens of distinction in the Colony at that time.

<sup>2</sup> Colonial Entry Book, 1682-95, p. 80.

<sup>3</sup> *Ibid.*

<sup>4</sup> Minutes of Assembly, April 22, 1695, Colonial Entry Book 1682-95. The Burgesses sat in the same houses in 1696; see Minutes, Sept. 28, 1696, B. T. Va., vol. lii.



reading of orders, which always took place after the call of the roll.<sup>1</sup>

Perhaps the chief duty of the Committee on Propositions and Grievances was to inquire into and report on the complaints laid before the House by the inhabitants of the different counties from time to time. Instances of this kind occurred as early as 1635. Apparently, at this date, statements of grievances were occasionally presented, not to the House, but to the General Assembly sitting as a Committee of the Whole. Not long before Harvey was deposed, the Council (in the capacity of an Upper Chamber) and the House of Burgesses met at Jamestown in order to give a hearing to the numerous protests against oppression made by the people.<sup>2</sup> In this case, and probably in all cases at this time, the petitions seeking redress were presented, not by the Burgess of the county where the complainants resided, but by the complainants in person.

By 1663, the custom had become established for counties and individuals to present their petitions of complaint through the Burgesses representing them. In order that the inhabitants of a county might have an opportunity of formulating their grievances in sufficient time for submission to the House, the law required the sheriff to give ample information as to the day when and the place where their member would be ready to receive them.<sup>3</sup> Some years afterwards, the justices of Accomac instructed the clerk of the court

<sup>1</sup> Randolph MS., vol. iii., p. 281.

<sup>2</sup> See letter of Samuel Mathews, May 25, 1635, *British Colonial Papers*, vol. viii., 1634-5, No. 65.

<sup>3</sup> Hening's *Statutes*, vol. ii., p. 212. The place of meeting was generally "at the usual place of election"; and the people were informed of the day "by publication in the parish churches."

to set up a notice at the court-house door that all the freeholders of the upper part of the county having complaints to make were expected to meet the Burgess at Mr. Thomas Fowlkes's residence for the purpose of laying these complaints before him with a view to their being reported to the Assembly for redress.<sup>1</sup> And this was probably the course very generally followed in the Colony at this time.

So extraordinary were the number of grievances presented after the suppression of the Insurrection of 1676, that it was thought necessary to restrain the liberty of the people in this respect. It was declared by the General Assembly in 1680 that this right had been allowed so much latitude that ill disposed and seditious persons claiming to represent the inhabitants of a whole county, but in reality representing only themselves, took advantage of it to bring before the House complaints which were scandalous or rebellious in spirit. In order to put a stop to this abuse, the sheriff of each county was instructed to appoint the time and place for the reception of grievances; and unless these grievances were reduced to writing and signed by the person or persons offering them, and the signature attested by the clerk or the presiding justice of the county court, they were not to be submitted to the Burgess for transmission to the House.<sup>2</sup> It was hoped that, in this way, all objectionable petitions would be effectually shut out from consideration, as these officers could be relied upon to refuse to attest them if the contents were calculated to offend the Assembly.

Such a regulation as this was as likely to err as far

<sup>1</sup> Accomac County Records, vol. 1671-73, p. 16.

<sup>2</sup> Acts of Assembly, 1680, Colonial Entry Book, vol. lxxxvi.; Henning's *Statutes*, vol. ii., p. 482.

on the side of improper suppression as absolute freedom of petition was on the side of license. Nevertheless, the Burgesses never showed greater intolerance of all interference with the right of the people to present their grievances than after its adoption. An incident occurred in 1688 which illustrated this fact in a remarkable manner. It had recently come to light that Colonel John Custis, the collector of customs for the Eastern Shore, had been guilty of demanding extortionate fees of shipmasters, merchants, and traders who had had occasion to transact official business with him. At the next election for Burgesses in Accomac county, the people presented in writing a full list of their complaints, and these included very severe strictures on Custis's conduct. Learning of this, Custis, who was present when the list was handed in, uttered many menacing words in a loud voice, and shaking his cane furiously and threateningly, seized the paper and refused to give it up, declaring, in the hearing of the crowd, that if another list of grievances was drawn up, he would seize and keep that also. The people were so much overawed by his violent and resolute demeanor that they refrained on that occasion from repeating their charges. Information of his act, however, came to the Burgesses' ears, and their indignation was so much aroused in consequence, that they addressed a formal request to the Governor to apply the law of England for the prevention in the future of such "unwarrantable practices," so that the inhabitants of the Colony might not "by the power or greatness of any person be hindered or molested in giving in their just grievances for redress by the General Assembly according to the King's writ for election of Burgesses." In terms of great severity, they



condemned Custis for presuming on the dignity of his office, and the influence of his wealth and high social position.<sup>1</sup>

At least thirteen counties, in 1691, laid complaints before the House through the channel of their respective Burgesses.<sup>2</sup> It was during this year that George Worsham, of Henrico, in behalf of himself and several others, who with him had subscribed a paper containing a statement of their personal grievances, delivered the document to the county's Burgess in the court-room at the county seat; and this was probably the manner in which such a petition was most often presented.<sup>3</sup> It still, however, had to be attested by the clerk of the court or the presiding justice, a fact which, in actual practice, gave the court itself the right to pass upon the character of its contents. In 1692-3, when a paper of this kind was thus submitted to the judges of Henrico, they found on reading it that it was open to strong objection from the point of view of the King's interests; and, in consequence, they declined to allow it to be attested.<sup>4</sup> The knowledge that every such statement of grievances had to be first brought to the county court's attention led the Burgess to announce publicly that all petitions of this nature would be received by him at the monthly term of this body; and this course was the more convenient, as the majority of the House's members also sat on the different county benches, and were, therefore, required to be present at the meetings of the justices. Promptness in dealing with the grievances was thus assured; the

<sup>1</sup> Colonial Entry Book, 1682-95, p. 571.

<sup>2</sup> Minutes of House of Burgesses, April 21, 1691, Colonial Entry Book, 1682-95.

<sup>3</sup> Henrico County Minute Book, 1682-1701, p. 341, Va. St. Libr.

<sup>4</sup> Henrico County Records, Orders February 20, 1692-3.

court examined them as soon as handed in, and if inoffensive, ordered their immediate attestation and delivery to the Burgess for transmission to the Assembly.<sup>1</sup>

The duty of the Committee on Propositions and Grievances was not confined to reporting to the House its conclusions as to the justice of the various complaints submitted to that body by the Burgesses as representatives of the people. All propositions of whatever character, but particularly propositions relating to the passage of new Acts, came first under this committee's supervision; in this respect, it performed the functions of the judiciary committee of a modern legislature; and its recommendations, no doubt, had a powerful influence in shaping the final decisions of the House.<sup>2</sup> The latter body, in 1682, adopted a resolution that thereafter members of the Council should be invited to assist all the committees, "but especially this committee, in debating and proposing matters for ye consideration of ye Grand Assembly." This seems to have been the rule down to 1680. The Governor then declined to consent to its revival and continuation, on the ground that it was repugnant to the usages of Parliament. The utility of the rule lay in the fact that a bill recommended by this mixed committee

<sup>1</sup> At the meeting of the Henrico County Court, held April, 1695, an order was entered for the publication of the fact "that on the eleventh day of this instant April, the Burgesses of this county will be there [*i. e.*, at the county seat] to receive their county's grievances if any"; see Henrico County Records, vol. 1677-99, p. 47, Va. St. Libr. The *Present State of Virginia*, 1697-8 states that "To know the humours, common talk, and designs of the people of a county, there is no better way than to peruse the Journal of the House of Burgesses and the Committee on Propositions and Grievances"; section vi.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 497.

would pass the General Assembly on its merits with promptness, whereas in the absence of the rule, every measure adopted by the Burgesses would have to be elaborately explained to the members of the Upper House before there could be any hope of its acceptance, a fact that would inevitably cause great delay, and indirectly increase the burden of public taxation. So much at heart did the House have the restoration of the former regulation that, for eighteen days, they declined to go on with the public business.<sup>1</sup>

After 1677, the Committee on Claims was, in the same manner as the Committee on Propositions and Grievances, protected from those encroachments on its time and attention which would have followed had no check been put on the petitions submitted through the Burgesses by their constituents. Subsequent to that year, a claim for money expended or earned had to be certified by the court of the county where the claimant resided.<sup>2</sup> As already pointed out, each county court held at least one term during the year to pass upon the different claims made in writing either against the county itself, or the general public for services performed. If the claim against the public was shown to be proper and correct, the court's attestation to that effect authorized its delivery to the Burgess of the county for transmission to the Assembly. After this preliminary examination, it is not likely that the Committee on Claims had any serious difficulty in finding out whether or not there were just reasons for recommending it to the House for final recognition. If business of this kind alone had demanded the Committee's attention, its duties would

<sup>1</sup> Colonial Entry Book, 1682-95, p. 9.

<sup>2</sup> Acts of Assembly, Feb. 20, 1677.



not have been exacting or burdensome. Down to the time when the Assembly's right to hear appeals from the General Court's decisions was greatly curtailed, this Committee seems to have been the one always called upon to investigate the law and the facts upon which these appeals were based, a task requiring extraordinary patience, discrimination, and knowledge of legal principles. To this extent, therefore, the Committee on Claims formed a very important judicial body; and its members were no doubt chosen with great care. When these judicial functions were very much curtailed, the necessity for this care was greatly diminished.

The proceedings of the House when the reports of committees or other business came up for discussion were governed by certain general regulations. Perfect order, for instance, was required to be enforced; and no member was allowed to address the presiding officer except as "Mr. Speaker." Everyone engaging in the debate had to stand up; and also to remove his hat, a proof that the custom of Parliament down to our own day in keeping the head covered while the member occupied his seat, prevailed in the House of Burgesses in these early times. Whoever interrupted the debater on the floor without his permission made himself liable to a fine of one thousand pounds of tobacco. No personalities were tolerated; the Burgess guilty of such an offence was compelled to pay a fine of five hundred pounds of the same commodity. Nor was a member suffered to address the House more than once on the same occasion, as a more frequent participation in the discussion was supposed to interfere with the rights of other members to express their opinions. Smoking in the Assembly chamber was for-

bidden unless the House had adjourned for the day or for a recess; and in the latter case, it was only allowed if the person indulging in a pipe had first obtained the consent of the majority of the Burgesses present. Should a member appear in the Chamber perceptibly under the influence of liquor, he was condemned to pay a fine of one hundred pounds of tobacco.<sup>1</sup>

As a rule, the House finally adjourned only after all the business before its members had been settled. Sometimes, however, it was suddenly dissolved by the Governor when the matters requiring its attention had only been partly attended to. Occasionally, the General Assembly on its own motion requested that officer to prorogue it, or at least to authorize it to take a recess of some length. This usually occurred when an epidemical disorder was prevailing in the vicinity of Jamestown. In 1696, small-pox broke out there, a contagious distemper held in peculiar dread. In their address to the Governor asking for a recess, the Assembly declared that this disease, which was known to be very fatal, was propagated in a very rapid manner; that the session of the House brought a crowd of persons to Jamestown unavoidably, who were liable to be struck down; that the number of members present, already greatly reduced by the absence of many apprehensive of attack, would be further diminished should the contagion reach them; and that, finally, the spread of the disease among them signified its spread throughout the Colony, as their homes were so widely scattered. Already, one of the Burgesses had been compelled to leave because the distemper had shown itself in the circle of his family.<sup>2</sup>

<sup>1</sup> Orders of Assembly, 1663, Randolph MS., vol. iii., p. 288.

<sup>2</sup> Minutes of House of Burgesses, April 25, 1696, B. T. Va., vol. lii.

Excepting for a severe epidemic of this kind, the House is not known to have adjourned more than once under the influence of causes affecting the general health of its members. In 1619, the first General Assembly to convene in the Colony broke up before all the laws had been engrossed, on account of the extraordinary amount of sickness prevailing among the Burgesses in consequence of the excessive heat; the sittings had extended into August, and the members had thus been exposed to the debilitating rays of the hottest suns of the year amid the miasmatic airs rising from the marshes around Jamestown.<sup>1</sup>

<sup>1</sup> Mr. Shelley was the only one of the Burgesses who died at the time; see Minutes of Assembly, 1619, *Colonial Records of Virginia*, State Senate Doct., Extra, 1874.



## CHAPTER XXIX

### House of Burgesses : General Spirit

**A**LTHOUGH the Burgesses were distinguished by a strong spirit of loyalty to England and the throne, nevertheless they had a clear conception of their rights, and never lacked the courage to maintain them against the encroachments even of the King himself. The Assembly of 1619, in announcing its readiness to submit all the laws and orders adopted by it to the Company for acceptance or rejection, openly declared that any regulations which the quarter courts in London might draw up for enforcement in the Colony should not be put in operation until the General Assembly's approbation had been obtained. This was on the Burgesses' part a very bold claim of a right to pass upon all ordinances emanating from the fountain head of power at this time; and it showed very plainly the care which that body was prepared to exercise in overlooking the general welfare of the people.<sup>1</sup> When the King, during Harvey's administration, proposed to purchase from year to year the entire crop of

<sup>1</sup> See Minutes of Assembly, 1619, *Colonial Records of Virginia*, State Senate Doct., Extra, 1874. "As they can make no laws until they are ratified here [*i. e.* England], so they think it but reason that none shall be enacted here without their consent, because they only feel them and must live under them."—*Works of Captain John Smith*, vol. ii., p. 65, Richmond edition.

tobacco produced by the planters, the same body, in an equally unshrinking spirit, pronounced the amount offered to be too small, and it did not hesitate to refuse to enter into the contract suggested.<sup>1</sup> A high tribute was unintentionally paid to the sturdy and independent character of the Burgesses at this time when Harvey described them as "rude and ill conditioned," and as "more likely to effect mutiny than good laws and orders."<sup>2</sup>

During the period of the Commonwealth, the House managed the Colony's affairs with few instructions from the Mother Country to hamper it. So extreme were the claims of this body at this time that it denied that the Governor possessed the authority to dissolve it; and it forced Mathews to yield to this contention until the whole controversy should be passed upon in England. In re-electing him to the same office, the Assembly formally declared that they invested him with all the rights and privileges incidental to the position; which was tantamount to an assertion that they possessed absolute power in the Colony. That body went so far in 1656 as to appoint all the justices of the county courts and the principal military officers, hitherto one of the usual prerogatives of the Governor.<sup>3</sup>

The conditions now prevailing in the Colony were the reverse of those prevailing in England. Parliament, which, at one time, concentrated in itself every branch of civil and military authority, had now sunk into impotency under the strong will of Cromwell. In

<sup>1</sup> Harvey declined or neglected to forward the letter containing the reasons which influenced the Assembly in its action.

<sup>2</sup> Harvey to Windebank, July 14, 1635, British Colonial Papers, vol. viii., No. 73.

<sup>3</sup> *Va. Maga. of Hist. and Biog.*, vol. viii., p. 176; Campbell's *History of Va.*, p. 238.

Virginia, on the other hand, owing to its being too remote for the great Protector to follow its affairs closely and continuously, all the power had fallen into the hands of the House of Burgesses. It is a remarkable fact that the suppression of the popular liberties of the English as represented by their House of Commons was contemporaneous with the expansion of the popular liberties of the Virginians as represented by their Assembly. When in the winter of 1659-60, news was brought to Jamestown that the Mother Country, in consequence of Cromwell's death, had drifted into a state of great distraction, and there was no longer there an "absolute and confessed power," an order was adopted that, until a command should be received from London which could be considered as undoubtedly lawful, the whole power of the Colony was to reside in the House, and no writ should issue except in the name of the Grand Assembly.<sup>1</sup> During this memorable year, the Governor was instructed by the same body to call the Burgesses together at least once in the course of every twenty-four months; and he was forbidden to dissolve them without the consent of a majority of their number. But above all, he was not permitted to appoint the Secretary of State, or the members of the Council without the Assembly's approval.<sup>2</sup>

The subserviency of the Long Assembly, undissolved from 1662 to 1676, was directly attributable to the degrading and corrupting influence of the Restoration. These influences, which led in England to the continuation of the same Parliament through eighteen years without a single dissolution, were felt in Virginia

<sup>1</sup> Hening's *Statutes*, vol. i., p. 530.

<sup>2</sup> *Ibid.* p. 531.



with peculiar force by that powerful class which furnished the greater number of the Assembly's members. The spirit prevailing in the House, which, during the Protectorate, sought to exalt the power of the people, was, after the Restoration, converted into a disposition to reduce that power; and this was due to the fact that the Burgesses had become independent of the people owing to the cessation of periodical popular elections. All the members who had served in freer times were soon dropped. The Assembly soon grew to be as much of an oligarchy as any body so submissive to their superior officer could be in actual practice; and in assuming this character, they were unquestionably moulded more or less by the influence of Berkeley, who, with perfect sincerity, entertained the most extreme views as to the scope of official power. His well known reason for retaining this Assembly for so many years without giving those enjoying the suffrage an opportunity to replace all its members should they so desire, was that the more extended the experience of these men as Burgesses, the more wisely could they perform the duties of their place; but this was a reason which would make of every popular Assembly a permanent, because a practically self-perpetuating, body, and would raise it entirely above the approval or disapproval of the persons supposed to possess the franchise.

The sinister influence of this Assembly cannot be gauged entirely by the history of its purely legislative acts; the example set by it in defying public sentiment by countenancing old abuses and creating new, and by seeking to aggrandize to itself, regardless of the public welfare, as many powers and benefits as it could grasp, spread through the whole official framework of the

Colony the like spirit of selfishness and indifference to popular complaints. It was this spirit, largely attributable as it was to the Long Assembly, which was the principal cause of the Insurrection of 1676, a movement that would have occurred sooner or later, whether or not there had been Indian aggression to start it. The popular bitterness against the Governor and Assembly had been steadily increasing for at least ten years; and along with it, went an almost equally strong feeling directed against all other local bodies possessing authority, which had taken their cue from these officials.<sup>1</sup>

The whole fury of the people at large in their resentment against oppression seemed to be concentrated in Bacon's order to his men on a memorable occasion to aim the muzzles of their guns at the windows of the apartment in which the Burgesses were sitting; and also in his threat that, should a commission to lead an expedition against the Indians be refused him, he would have the Burgesses' "hearts' blood," a menace he accompanied with what the chronicler of the scene describes as "dreadful newly coined oaths," uttered in such profusion "as if he thought God would be delighted with that kind."<sup>2</sup> The outraged feeling of the mass of the Virginians found expression in the laws of what has long been designated as Bacon's Assembly, the immediate successor of the Long Assembly, and destined always to stand in the most honorable

<sup>1</sup> The arbitrary conduct of the vestries has already been pointed out. Perhaps the most remarkable statement of the various forms of oppression which the people had to suffer during the existence of the Long Assembly is embodied in the series of grievances presented to the English Commissioners after the collapse of the Insurrection.

<sup>2</sup> British Colonial Papers, vol. xxxvii., Doct. 16.

contrast with the latter body. Its Acts reflect unmistakably its fixed determination to remove every abuse and rectify every wrong under which the people were languishing. Had the theatre upon which this Assembly met been that of a nation instead of that of a small colony in a remote part of the world, its spirit and its measures would long ago have won an extraordinary fame in history, and the legislators themselves would have enjoyed a universal reputation as among the wisest and most patriotic who have been called on to pass laws in a great crisis.

The Insurrection of 1676 closed in a sudden collapse, followed by bloody reprisals, but the sturdy spirit in which it had its origin was far from being extinguished. That spirit was reflected on many subsequent occasions in the attitude of the House, a body not the less determined because it could not hope to be always successful in its aims. The official relations of the Burgesses with Culpeper and Howard, who were pliant and submissive tools of their royal masters, was a prolonged struggle against greedy impositions and illegal innovations. Unlike Berkeley, these two Governors were not supported by the members of the highest social class as represented in the Assembly; on the contrary, the whole of that body seems to have, at times at least, presented a common front against their encroachments upon popular rights. Men who had countenanced Berkeley in his oppressions, and stood by him in the conflict with Bacon, turned against Culpeper and Howard with a firmness and courage, and an indifference to consequences, worthy of those persons who had staked their lives and fortunes on the issue of the Insurrection of 1676. Berkeley's attitude towards the Assembly was that of a leader



among equals, who, although entertaining extreme views of his official rights and powers, had yet been long identified with the Colony, and had given many proofs of his devotion to its interests, and of his jealousy of its honor. The attitude of Culpeper and Howard, on the other hand, was simply that of two schoolmasters puffed up with a sense of their superiority in knowledge and wisdom over their unruly and fractious pupils; and this unwarranted arrogance undoubtedly greatly stimulated the irritation primarily caused by their efforts to extend the royal prerogative, and by their use of very questionable means to increase their own incomes.<sup>1</sup>

The firm and courageous spirit shown during the latter part of the century by the Burgesses as guardians of the public welfare may be illustrated by a more particular reference to instances of their resentment of the aggressions by Governor and King. In April, 1677, the different records of the House were forcibly taken possession of by two of the English Commissioners, Berry and Morryson. These records were at the time in charge of Robert Beverley, the clerk of that body. In the following October, the House appealed to the third Commissioner, Col. Herbert Jeffreys, now serving as Governor, for their return, on the ground that their seizure and their detention alike were illegal. The Commissioners, in the orig-

<sup>1</sup> In his address to the House of Burgesses, Oct. 9, 1685, Howard spoke as follows: "Gentlemen, I have observed in very many of your lawes that fines and forfeitures are to be accounted for to ye Publique, a name certainly most odious under a regal government, and that which in name, so in consequence, differs but little from that detestable one, Republick, which I am very much persuaded you all soe really abhor that you will remove anything which in the least relates to it," etc.; Colonial Entry Book, 1682-95, p. 269.

inal warrant authorizing the removal of the records, had asserted that the right to take such a step had been conferred on them by the royal instructions, stamped with the great seal. The House in their reply had denied that any previous King had ever directed or approved such a violation of their privileges; and they seem to have expressed some doubt as to whether such a power was really contained in the present commission. In seeking Jeffreys' intervention, as already stated, the Burgesses urged him to obtain for them the satisfaction of knowing that no such encroachment on their rights would be repeated in the future; Jeffreys sent the appeal to Morryson, who happened at this time to be visiting England; Morryson enclosed it to the Secretary of State, with the request that it should be submitted to the Commissioners of Trade and Plantations as a proof of the extraordinary "arrogance of the Virginian authorities." In a second letter, Morryson stated that their commission had been read not only to Beverley before the delivery of the records was demanded, but also, on their first arrival in Virginia, to Berkeley; and subsequently, when the Commissioners had held their first sitting, it had been proclaimed to the public<sup>1</sup>; the House, he asserted, was, therefore, fully informed as to the Commissioners' authority in seizing the records, and yet, in the face of the King's mandate, had dared to make so presumptuous a protest. Later on, there was an attempt to seize the same records in order to expunge a resolution adopted by the House in condemnation of this violation of their privileges; Beverley, who was still in charge, refused to deliver them to the Governor

<sup>1</sup> Colonial Entry Book, 1681-85, p. 11; British Colonial Papers, vol. xlii., Nos. 138, 139, 138, I.

and Council as commanded, on the ground that he could not legally do this "without leave of the Burgesses, his masters"; and he preferred to go to prison rather than to outrage his sense of duty.<sup>1</sup>

The Burgesses, in 1684, boldly rebuked Howard for sending a communication to them touching a resolution of the House, of which he had received private information, presumably from a member of that body.<sup>2</sup> Reference has already been made to the firmness with which they, in 1685, disputed the Governor's authority to veto the Acts passed by the General Assembly.<sup>3</sup> They showed equal firmness in opposing the position taken by that officer that he was impowered, with the King's consent, to revive any statute which had been repealed, merely by issuing his proclamation; indeed, so exasperated were the Burgesses by this assertion of right that they addressed the King directly on the subject, and having condemned the claim as repugnant to established usage, they begged that no law thereafter should be revived until the General Assembly's reasons for repealing it had been reported in full in England.<sup>4</sup>

Howard, in 1687, again complained to the Privy Council that the Assembly "rudely and boldly" disputed the royal authority to repeal laws by proclamation. The King, it seems, had only recently directed

<sup>1</sup> Hening's *Statutes*, vol. iii., p. 458; see also Campbell's *History of Virginia*, p. 335, and Hening's *Statutes*, vol. iii., p. 40.

<sup>2</sup> Minutes of Assembly, April 16, 1684, Colonial Entry Book, 1682-95.

<sup>3</sup> See Hening's *Statutes*, vol. iii., p. 40.

<sup>4</sup> British Colonial Papers, vol. lii., No. 103. The statute prescribing attorney's fees had been repealed by the General Assembly in 1683, but the original measure was revived by Howard's proclamation issued at the command of the King, who had vetoed the repealing Act.



the annulment in this manner of the Act allowing the planters to pay their quit-rents in the form of tobacco. "I sent for the Burgesses," Howard wrote, "and showed them his Majesty's command, and offered them the opportunity to express their duty to his Majesty by repealing that law, but they would not."<sup>1</sup> The emotions of the same body of men may be conceived when Howard read to them the royal instruction that all grants of money to the Governor, Deputy-Governor, or Commander-in-Chief, should state that these grants were made to the King with the Assembly's "humble desire" that they should be applied to the use specially designated.<sup>2</sup>

Nicholson's instructions in 1699, on his recent appointment to the Government, were submitted to the House sitting as a Committee of the Whole. It was declared in one of the clauses that all Acts passed for the Colony's good government should be expressed indefinitely as to the time they were designed to cover, unless the ends sought to be accomplished were purely temporary. The only remark on this clause made by the Burgesses was that the Assembly had been long in the habit of doing this, as plainly the necessary as well as the most convenient course to pursue.<sup>3</sup> The dryness of this commentary, and indeed any commentary at all, would have aroused the indignation of such men as Culpeper and Howard, who exercised their private discretion in disclosing their instructions even to the members of their own respective Councils;

<sup>1</sup> Colonial Entry Book, 1685-90, pp. 125, 126.

<sup>2</sup> Instructions to Howard, 1685, Colonial Entry Book, 1685-90, p. 26.

<sup>3</sup> Minutes of House of Burgesses, May 22, 1699, B. T. Va., vol. lii.

and who would have considered an opinion on the wisdom of these instructions coming from the Assembly as an impertinence amounting almost to disloyalty.

## CHAPTER XXX

### The General Assembly

THE General Assembly from its earliest session was composed, not only of the House of Burgesses sitting as a Lower Chamber, but also of the Governor and Council sitting as an Upper. As has been already pointed out, the Governor and Council in the beginning enjoyed some of the powers of a single legislative body. From the creation of the House of Burgesses, they were associated with that body somewhat in the character of a modern Senate. In 1621, Wyatt's Instructions, which partook so largely of the nature of a written constitution, expressly authorized the summoning of a General Assembly, made up, on the one hand, of elected representatives of the people, and, on the other, of the Governor and Council; and its decisions were to be shaped entirely by the votes of a majority of the members present. The Governor himself possessed only a negative voice. Apparently, for many years, the Upper House sat in the same apartment as the Lower, and at the same time.<sup>1</sup> During the period of the Commonwealth, however, it is to be inferred that the two bodies did

<sup>1</sup> Beverley states that this custom prevailed until Culpeper's administration; see his *History of Virginia*, p. 187. For Instructions to Wyatt, see Randolph MS., vol. iii., p. 160.



not sit together, as the Burgesses had adopted a regulation to discuss all laws in private before submitting them to the Upper House for adoption or rejection.<sup>1</sup> When the Upper House began to sit apart, the Governor was generally, although not always, present at its meetings.<sup>2</sup>

Did the Council sitting as an Upper Chamber possess the right to originate legislation? Whatever the powers of this body previous to 1666, it had certainly acquired by that date the right to amend the Acts coming up from the House. The right of concurrence or rejection, and the right of amendment seem to have been the limit of its powers.<sup>3</sup> The Governor was apparently authorized to suggest to the House the passage of special laws<sup>4</sup>; but no proof exists that any legislation ever began in the Upper Chamber. There seem to have been numerous conferences held between the Governor and Council, in their character as the Upper House, on the one side, and the Burgesses, in their character as the Lower, on the other; but this was almost always done through the intermediation of committees appointed by the two bodies.<sup>5</sup>

<sup>1</sup> Hening's *Statutes*, vol. i., p. 497.

<sup>2</sup> "Governor sits commonly in Upper House"; see Hartwell's *Replies to Inquiries of English Commissioners*, B. T. Va., 1697, vol. vi., p. 145; see also *Present State of Virginia*, 1697-8, Section vi.

<sup>3</sup> "Upon reading the Governor and Council's approbation with the alterations annexed, they were all gratefully assented to." Acts of Assembly Nov. 6, 1666, Randolph MS., vol. iii., p. 298; see also Hening's *Statutes*, vol. ii., p. 254. An example of the manner in which additions were made by the Upper House will be found in B. T. Va., 1691, No. 29.

<sup>4</sup> See, for instance, B. T. Va., 1691, No. 29.

<sup>5</sup> "The Assembly they conclude themselves entitled to all the rights and privileges of an English Parliament and begin to search in the records of that Honorable House for Precedents to govern

The General Assembly showed an unfailing determination to preserve its authority over the minds of the people at large, and, in consequence, it did not hesitate to inflict severe punishment upon any one who ventured to reflect on its proceedings. Francis Willis, in 1640, condemned the laws of the last General Assembly as repugnant to justice; and he also spoke in harsh terms of the Gloucester bench. The General Court, taking cognizance of his words, considered to be the more inexcusable because he was the clerk of that county, and also a practising attorney, sentenced him to stand at the door of the court-house with a placard attached to his head announcing his offence; deprived him of his clerkship and attorney's license; and required him to pay a fine of twenty-eight pounds sterling, and to suffer imprisonment during the pleasure of the Governor.<sup>1</sup> A proclamation of Nicholson, issued in 1690, commanded the grand juries to indict all persons who spoke with contempt of the laws of Virginia.<sup>2</sup> Whoever ventured to raise doubts as to whether the people of the Colony were bound to obey every statute was declared to be "factious and seditious," and for the first offence was fined, and for the second, fined and also committed to jail.<sup>3</sup>

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themselves by. The Council have vanity enough to think they almost stand upon equal terms with the Right Honorable House of Lords"; see Col. Quarry's Memorial to Commissioners of Trade, 1703, Massachusetts Hist. Coll., vol. vii., 3rd series, p. 233.

<sup>1</sup> Robinson Transcripts, p. 28.

<sup>2</sup> B. T. Va., 1690, No. 3. "Major John Tilney saith that this day when the late Acts of Assembly were reading over, he heard Henry Boston say that they were simple foolish things, whereupon ye said deponent reproved him, and ye said Boston demanded whether he did it out of envey, and further saith not"; Northampton County Records, orig. vol. 1657-64, p. 72.

<sup>3</sup> Hening's *Statutes*, vol. ii., p. 501.

No Act became a law until it had received the signatures of the Speaker and Governor.<sup>1</sup> The Company during the time the affairs of Virginia were administered by it was impowered to allow or disallow, as should seem proper, each statute adopted by the General Assembly; but until the Company's pleasure was known, these laws remained as much in force as if they had already been favorably considered by the Quarter Court in England. That they did so was due to the urgent request of the General Assembly itself, which declared that, unless every Act became operative immediately after its passage, "the people would grow so insolent that they would shake off all government, and there would be no living among them."<sup>2</sup> So soon as the King was reinstated in direct control of the Colony, the power to veto any ordinance of the General Assembly failing to receive his approval was fully resumed by him; but apparently the existing rule permitting a statute to be put in force at once was not abrogated, for, in 1629, Harvey suggested to the Privy Council that all the Acts passed by the General Assembly should stand simply as "propositions until his Majesty should be pleased under the great seal to ratify the same." This recommendation seems to have been favorably considered, since the Privy Council instructed him to transmit to England for allowance or disallowance a copy of every ordinance adopted by the General Assembly. Those that should receive the royal assent were to pass the great seal

<sup>1</sup> Declarations of the General Assembly ran as follows: "We, the Governor, Council, and Burgesses of this Grand Assembly"; see Randolph MS., vol. iii., p. 239, and also Robinson Transcripts, p. 194.

<sup>2</sup> Acts of Assembly, 1619, p. 31, Colonial Records of Virginia, State Senate Doct., Extra, 1874.



and then be returned to Virginia for permanent enforcement.<sup>1</sup>

If this order of the Privy Council changed the custom then prevailing, namely, that every Act was to be operative from its passage subject to final approval or annulment by the English authorities, that custom was in a few years restored, simply because it had had its origin in the necessities of the situation, growing, on the one hand, out of the Colony's remoteness from London, and on the other, out of sudden conjunctions of circumstances, hostile to the safety of the people, which could only be met by laws to be put in force at once. In propounding the basis of a new charter in 1675, Morryson, Ludwell, and Smith, the agents of Virginia in England during that year, declared that the inhabitants of the Colony entertained no objection to the King's exercising the right of veto provided that his disapproval of a law was signified to the General Assembly within the first two years following its passage.<sup>2</sup> A failure to express that disapproval before the end of this period, they urged, ought to be taken as a sign of assent; and such was the rule which remained in force until the close of the century.<sup>3</sup>

In order that the King might be informed of the tenor of new laws at the earliest moment practicable, so soon as a session of the General Assembly came to an end, copies of all its Acts were dispatched to England by the first ship thereafter setting sail. It seems, as has been already pointed out, to have been, for many years, the exclusive duty of the Secretary of the Colony to forward them, but during later periods, this was

<sup>1</sup> British Colonial Papers, vol. v., Nos. 22, 23.

<sup>2</sup> Hening's *Statutes*, vol. ii., p. 527; Randolph MS., vol. iii., p. 328.

<sup>3</sup> Beverley's *History of Virginia*, p. 191.

also done by the clerk of the House; and so important was this duty considered to be, that duplicate copies of the laws were generally sent, addressed either to the Privy Council, or to the Board of Trade and Plantations.<sup>1</sup> Howard was instructed in 1685 to have similar copies transmitted within three months after the General Assembly adjourned; and he was also required to accompany them with recommendations as to such alterations as he considered to be advisable. The same order was given to Andros at a later date.<sup>2</sup> This Governor, in 1698, offered an apology to the English Secretary of State for "ye rude dress ye laws were put in." It was impossible, he asserted, to forward them in a handsome form, since there were neither towns nor tradesmen to supply what was needed.<sup>3</sup>

So soon as the Acts of the last General Assembly reached the hands of the Board of Trade and Plantations (to which they were, as a rule, first consigned), they were submitted by that body to the Attorney-General for his opinion as to their validity from a legal point of view. The statutes relating to trade and the royal revenues, if open to no legal objection, were then submitted to the Commissioners of the Customs, who had to decide whether they were repugnant to the commercial and financial interests of the kingdom; such Acts, for instance, were those passed to encourage

<sup>1</sup> In 1638, Secretary Kemp sent to England a report of the Proceedings of the General Assembly, with copies of the most recent laws which that body had adopted. Secretary Spencer frequently followed this example; see, for an instance of the performance of this duty by the clerk, Colonial Entry Book, 1681-85, p. 308.

<sup>2</sup> Colonial Entry Book, 1685-90, p. 24; B. T. Va., 1692, Entry Book, vol. xxxvi., p. 109.

<sup>3</sup> B. T. Va., 1698, vol. vi., p. 361.

town building in Virginia, to promote the growth of woollen and linen manufactures there, and to prohibit the exportation of iron, wool, and skins.<sup>1</sup> Having first taken time to consider the probable effect of such new laws, the Commissioners were then required to attend a meeting of the Board of Trade, and in person to report their conclusions. In general, they were unfavorable to such laws, and advised their annulment.<sup>2</sup> Sometimes, however, they suggested important modifications only; and their recommendations were transmitted by the Board of Trade to the General Assembly to guide that body in reframing the Act disapproved of in part. Until this was done, the operation of the original Act was suspended.<sup>3</sup>

Should the Attorney-General decide that the statute submitted to him for his opinion ought to be repealed because invalid from a legal point of view, an order was dispatched to the Governor to issue his proclama-

<sup>1</sup> B. T. Va., Entry Book, vol. xxxvi., p. 238; Colonial Entry Book, vol. 1681-85, p. 4.

<sup>2</sup> The following gives the reason on which their recommendation of annulment was generally based: "Whereas in the Act of Trade, it is declared that in regard his Majesty's Plantations beyond seas are inhabited and peopled by his subjects of this his Kingdom of England for maintaining a greater correspondence and kindness between them, and keeping them in a firmer dependence upon it, and rendering them yet more beneficial and advantageous unto it in the further employment and increase of shipping and seamen, vent of English woollen and other manufactures and commoditys, rendering the navigation to and from the same more safe and cheap, and making this Kingdom a staple, not only of the commoditys of the Plantations, but also of the commoditys of other countries and places for the supplying of them, &c," to all or some of which the measure passed upon was declared repugnant; see Colonial Entry Book 1681-85, p. 242.

<sup>3</sup> See Andros's Proclamation to that effect in Essex County Records, vol. 1692-95, p. 282, Va. St. Libr.



tion at once announcing that the statute had been annulled; and this was also the course pursued whenever the Commissioners of Customs condemned a law of the Colony as repugnant to the commercial interests of the realm.<sup>1</sup> On one occasion, Culpeper, by a single proclamation, repealed as many as six Acts of Assembly, which had failed to receive the approval of the English authorities.<sup>2</sup> Every proclamation of this kind, with a view to ensuring its publicity, was read at least once from the bench during the sessions of the different county courts; from the pulpits of all the churches and chapels-of-ease after the congregations had assembled; and publicly at the several musters of the militia.<sup>3</sup>

<sup>1</sup> The order required the Governor and Council to instruct the Attorney-General of the Colony to draw up a proclamation signifying the King's wishes as to the Acts disapproved of; see B. T. Va., 1692, No. 128.

<sup>2</sup> British Colonial Papers, vol. xlv.

<sup>3</sup> See for an instance York County Records, vol. 1694-7, p. 23, Va. St. Libr.

## CHAPTER XXXI

### General Assembly : Revised Acts

AT various times during the Seventeenth century, the laws of the Colony were subjected to a careful review. An instance of double revision occurred in 1656, when the General Assembly directed that the statutes, which had been revised already at least once, should be "digested into one volume." This was really an attempt to codify the Acts in the most succinct form of which they were capable.<sup>1</sup> About twelve years afterwards, the same body adopted a resolution calling for a complete review of the entire text of the Colony's laws, the object of which seems to have been of a twofold nature:—first, to purge the statute book of all Acts no longer of use; and secondly, to remove all those serving to keep alive recollection of the Commonwealth and the former supremacy of the King's enemies. The preamble of this resolution stated that so many and such sudden changes of government had followed in consequence of the late distractions, and so many alterations of the statutes had accompanied these changes, that the people were in a state of bewilderment as to what ordinances they should obey, and the judges as to what offences they should punish. The aim of the

<sup>1</sup> Hening's *Statutes*, vol. i., p. 427.

new revision was to follow the laws of England as closely as the "capacity and constitutions" of Virginia would permit. The chief part in this important work seems to have been performed by Col. Francis Morryson, with whom was associated Henry Randolph, a citizen who had enjoyed an extended experience both as a clerk of court and as an attorney.<sup>1</sup> As these revised statutes were printed, they were popularly referred to as the "Printed Laws."<sup>2</sup>

The collection of statutes known as "Purvis's Laws" was printed sometime previous to 1684. In the spring of that year, the House Committee on Propositions and Grievances submitted a report on this collection, in which they pronounced it to be "very false and imperfect"; and in consequence of this condemnation, the Burgesses requested the Governor and Council to suppress the volume. It had been published by Captain John Purvis, commander of the ship *Duke of York*, who had imported into the Colony a large number of copies for sale, a fact which aroused the warm indignation of the Assembly; in a short time, he was summoned to appear before that body to answer for his "misdemeanour" in issuing, without first procuring a license, a book of such great importance. The Burgesses declared that, in its existing form, it was well calculated to bring "scandall and contempt" on the administration of the Colony's affairs; and the Governor and Council seem to have shared this opinion,

<sup>1</sup> See Beverley's *History of Virginia*; also Campbell's *History of Virginia*, p. 254.

<sup>2</sup> Among the articles sold at outcry by the Widow Creed in 1668 was the *Printed Lawes of Virginia*; see Surry County Records, vol. 1645-72, p. 342, Va. St. Libr.



for they promptly published an order that no county court would be permitted to use the book.<sup>1</sup>

The need of a careful revision of the laws soon became pressing. About 1687, a select committee, composed of Secretary Spencer and Colonels John Page and Philip Ludwell were appointed by the Governor and Council to carry out this important work; which seems to have been done with energy, for in October of that year, their report was submitted; but its immediate consideration was deferred on account of the sickness of two of the commission's members. Before the end of the following year, their revision had been adopted by the General Assembly, and a copy had been handed to the Board of Trade and Plantations in England by Howard in person.<sup>2</sup> This copy passed through the press soon after its arrival in England. In May, 1691, the Council in Virginia appropriated for the benefit of Colonel Page fifteen shillings in return for a printed volume of these revised Acts, and also for a collection in ordinary handwriting of all laws framed after the revision had been made. It is probable that Page had undertaken the task of codifying these supplementary statutes, for the transcription of which Alexander Boneman and Mr. Edwards were paid four pounds and one pound sterling respectively.<sup>3</sup>

Apparently during the early part of 1692, complete sets of the Colony's laws, carefully digested and accurately written out, were dispatched to England, where they seem to have been printed immediately after they had been examined and approved by the authorities.

<sup>1</sup> Minutes of House of Burgesses, April 16, 1684, Colonial Entry Book, 1682-95, p. 134. The Governor and Council in interfering were, no doubt, acting in their capacity as the General Court.

<sup>2</sup> Colonial Entry Book, 1680-95, pp. 255, 311.

<sup>3</sup> Minutes of Council, May 11, 1691, B. T. Va., 1691, No. 29.

This codification, however, did not give entire satisfaction in Virginia, for, in March, 1692-3, Richard Lee, the elder William Byrd, John Lear, and Edward Hill, members of the Council at that time, were nominated to confer with a similar committee to be appointed by the House, on the subject of the revision of the existing statutes.<sup>1</sup> This action led to nothing previous to May, 1695, for, in the course of that year, a number of other conferences were held and many suggestions were made having the same general object in view. It was proposed by the Governor and Council, for instance, that the joint committee should be composed of three Councillors and four Burgesses, a quorum to consist of one Councillor and three members of the House; that this committee as a whole should convene at Jamestown; and that each of its members should receive a daily stipend of fifteen shillings. The House declined to give its assent to this proposition; but a few days later, selected six of its own number to act as revisors at a salary respectively of one hundred and thirty pounds of tobacco daily. These six committee-men had obtained the highest number of votes when the question as to who should be appointed was submitted to the suffrage of the members.<sup>2</sup>

Practically, nothing was accomplished at this time, for only two years afterwards, the Board of Trade and Plantations, in a letter to Governor Andros, commented with severity on the disorder and contradictions into which the laws of Virginia had been permitted to fall;

<sup>1</sup> Minutes of Assembly, April 5, 1692, Colonial Entry Book, 1682-95; Minutes of Council, March 17, 1692-3, Colonial Entry Book, 1682-95.

<sup>2</sup> Minutes of Assembly, May 2, 8, 14, 1695, Colonial Entry Book, 1682-95.

it is possible that the Board formed this impression from an examination of the revised statutes probably sent to England after the work of the committees of 1695 had been completed. They pointedly criticized the recent course of the Colony's authorities in dispatching copies of the Acts in separate parcels, each copy representing only a part of those in operation, instead of forwarding copies of the whole body of Acts at that time in force. Andros was instructed to send over a complete set of the laws then in existence, with recommendations as to their alteration in whatever particulars should appear to him to require a change.<sup>1</sup>

So urgent had a review of the laws become by 1699 that the General Assembly, in the course of that year, was called together in special session to make the necessary provision for the work. When the body met, Nicholson having first addressed it respecting the purpose of its convening, the question came up as to what should be the representation of each chamber on the committee to which the task of revision was to be assigned. The House proposed that the Council should nominate three of the members, and the House itself six; and this suggestion seems to have been accepted after some debate. No action could be legally taken by this body in framing the laws unless two Councillors and four Burgesses participated, but any three of its members were empowered to summon witnesses, and to send for papers and copies of records. All citizens who happened to be in possession of documents relating to the first settlement of the country were requested to submit them to the examination of the

<sup>1</sup> See the Board of Trade's Letter to Andros, dated Sept. 2, 1699, B. T. Va., Entry Book, vol. xxxvii., p. 86.



committee; and anyone whatever was at liberty to come before that body while in session, and make suggestions as to alterations in the laws then in force. Perfect freedom of speech at the committee's sittings was allowed by the special order of the Governor. This important work was entrusted to Miles Cary, John Taylor, Robert Beverley, Anthony Armistead, Henry Duke, William Buckner, Bartholomew Fowler, and Benjamin Harrison, Jr.<sup>1</sup>

As early in the community's history as 1631-2, the Acts of the General Assembly were required to be published in one form or another in all parts of the Colony. The ordinary course adopted was for the justices of each county at the first term of their court following the close of a session, to read aloud themselves or to cause to be read aloud by the clerk, copies of the whole number of laws passed at that session; and these copies were afterwards filed away, but were always open to the perusal of anyone who wished to examine them.<sup>2</sup> The minutes contained in many of the original records show the presence in the clerk's offices at that time of such copies; for instance, among the papers received by Mr. Hill, the new clerk of Surry, in 1673, were the "printed and written Acts of Assembly."<sup>3</sup> One of the most frequent expenses entered in each county's annual levy was that incurred in the purchase of a transcript of the laws passed by the last General Assembly; and the cost of this transcript amounted

<sup>1</sup> Minutes of Assembly, May 18, 1699, B. T. Va., vol. lii.; Revisal of Va. Laws, 1699, B. T. Va., vol. lii.; Letter of Governor Nicholson, July, 1699, B. T. Va., vol. vii.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 177; see also Henrico County Minute Book, Orders May 16, 1692; Essex County Records, Orders April 10, 1693.

<sup>3</sup> Surry County Records, vol. 1671-84, p. 71, Va. St. Libr.

always to a considerable sum.<sup>1</sup> Occasionally, the full text of a statute was spread on the minutes of the court's proceedings, and thus formed a part of its permanent records.<sup>2</sup>

<sup>1</sup> See Essex County Records, Levy, Nov. 11, 1695.

<sup>2</sup> Essex County Records, vol. 1692-95, pp. 151-3, Va. St. Libr.

## CHAPTER XXXII

### General Assembly: By-Laws and Agents

THE General Assembly was, from an early date, impowered to grant to each county the right to adopt by-laws for the administration of its local affairs. This was perhaps first suggested by the remote situation of the region of country known as the Eastern Shore, for it was apparently to the Eastern Shore alone that this important privilege was allowed in the beginning. In 1655, the people of Northampton county, which at the time embraced all that part of this peninsula lying within the bounds of Virginia, acquired in this manner the right to "constitute laws and customs among themselves, and to proceed therein according to their own conveniences not repugnant to the laws of England."<sup>1</sup> Five years afterwards, the inhabitants of Gloucester were impowered to pass from time to time whatever ordinances they should think necessary to their success in pursuing and recovering runaway servants.<sup>2</sup> All counties and parishes incapable of being made subject to the scope of a general Act without detriment to their welfare, were, in 1662, permitted to pass by-laws better calculated to meet their peculiar wants. Such by-laws, which were to

<sup>1</sup> Randolph MS., vol. iii., p. 261.

<sup>2</sup> Hening's *Statutes*, vol. ii., p. 35.



be as binding as the statutes framed by the General Assembly, only became operative after they had received the approval of a majority of the voters residing in the districts to which alone they were designed to be applicable.<sup>1</sup> One year after this power was granted, Northumberland, a county divided from Maryland merely by the Potomac River, and, therefore, offering unusual facilities to discontented servants to escape, adopted a very strict by-law respecting the liberty hitherto allowed persons of this class to leave their master's plantation from time to time.<sup>2</sup> Northampton followed its example by drafting more stringent regulations touching the branding of cattle. The manner in which this was done was perhaps the one generally observed at this period on the Eastern Shore: the commander of every company of militia belonging to the county was ordered to assemble his men and to inform them in a body that a certain date and a certain place had been chosen for the passage of the proposed by-law; the company was then to proceed to elect two of its members, who, at nine o'clock on the morning of the day designated, were to present themselves at the place appointed, usually the county seat, and there unite with the justices in framing the desired measure. It is possible that this by-law was afterwards submitted to the popular voice for acceptance or rejection.<sup>3</sup>

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 171.

<sup>2</sup> Northumberland County Records, vol. 1652-66, p. 189.

<sup>3</sup> Northampton County Records, vol. 1664-74, folio, p. 5. In 1677-8, each county was authorized to pass by-laws relating to the destruction of wolves; see Colonial Entry Book, 1676-81, p. 163. During the same year, by the authority of the Act of 1662, Middlesex county passed a by-law to prevent the striking of fish, as this method wounded more than it killed, and it diminished the run in the creeks; see Middlesex County Records, vol. 1673-80, folio, p. 97. In 1685, Captain Thomas Chamberlaine, of Henrico,

In the course of 1679, the General Assembly laid down a special rule touching the manner of framing by-laws, the right to pass which had been again renewed in favor of all the counties: every parish in the Colony was authorized to choose, by the votes of a majority of its freeholders and householders, two representatives, who, having taken their seats on the bench of the county court, were to possess an equal voice with the justices in the adoption of such laws. Should a county embrace but one parish, four representatives were to be elected; and if it contained chapels-of-ease, then each of these places of worship was apparently empowered to choose an additional representative. It would seem that the decisions of this joint body were not required to be submitted to the people for approval.<sup>1</sup>

The burden of maintaining forts and other means of defence along the line of frontier led, about this time, as already stated elsewhere, to the adoption of certain offers made by private citizens with a view to the protection of that line in return for certain important advantages granted them; the chief of these was the bestowal of considerable areas of land, with

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was charged with the illegal detention of a mare, "To wch he replys that he took her up and still keeps her, supposing her his own, that he hath brought her to public view at Pucker's Gutt as ye by-law of this County enjoyns"; see Henrico County Minute Book, 1682-1701, p. 120, Va. St. Libr.

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 441. In 1681, Accomac was represented by six persons in addition to its justices in the making of its by-laws; this was because there were two chapels-of-ease situated in the county; see Records, vol. 1678-82. It would seem that, in 1666, the vestry of the single parish at that time embraced in Accomac met at the county seat and united with the justices in passing such laws as were thought necessary; see also Lower Norfolk County Antiquary, vol. v., Part I., p. 27.

the right to the beneficiaries, among other privileges, to pass by-laws for the government of the settlers; but in framing such laws, the principal grantee of each tract was required to be associated with two members of the nearest commission, and also with six representatives chosen by the inhabitants of the particular district. One of these tracts was situated at Rappahannock Fort, and the other at the Falls of the James; the first, under the control of Major Lawrence Smith; the second, of Col. William Byrd.<sup>1</sup>

Howard was, in 1685, ordered to see to the passage of an Act requiring that every by-law, before it could become operative, should receive the approval of the Governor and Council; but the General Assembly apparently only consented to obey after the King had expressly disallowed a statute in which no such provision was inserted.<sup>2</sup> The objection of that body to the change probably had its origin in the feeling on the Burgesses' part that, as the right to pass by-laws granted to the counties was a mere delegated right of the General Assembly itself, which embraced the Governor and Council sitting as the Upper House, it seemed to be confining to one chamber the right of approval or disapproval which really belonged to both chambers. Nevertheless, the counties, under this altered law, continued to pass by-laws; and such laws continued to relate generally to means of protecting property, such as the destruction of wolves, the confinement of wild horses, and the like.<sup>3</sup>

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 448. As already stated elsewhere, it is probable that this Act was disallowed in England.

<sup>2</sup> Colonial Entry Book, 1682-95, p. 180; *ibid.*, 1680-95, p. 221; *ibid.*, 1685-90, p. 52.

<sup>3</sup> Northumberland County Records, vol. 1678-98, p. 568; Minutes of Assembly, May 7, 1695, Colonial Entry Book, 1682-95.



The power delegated to certain persons in the counties to represent the General Assembly in passing by-laws was not more important than the power delegated to special agents in England to represent the same body in procuring various advantages for the benefit of the Colony. One of the earliest instances to occur was that of John Pountis, a member of the Council, who, when he was about to set out for London in February, 1623-4, was requested to press the people's general needs on the attention of the King; and in return for such an important service at so critical a moment, he was to receive, towards the expenses of his long journey, four pounds of tobacco for every male tithable to be found at this time in Virginia. The whole sum was to be raised by a public levy.<sup>1</sup> A similar tax was imposed in 1639 in order to reward the care, and pay the expenses, of agents of "quality and experience," engaged in watching the Colony's interests, apparently in England.<sup>2</sup> A generation later, Sir Henry Chichely, the Deputy-Governor, reluctantly admitted that the agents who, from time to time, had been employed by the General Assembly in London, had failed to rise to the public expectation, either through unskilful management on their part, or through the little influence possessed by the persons they had engaged to assist them.<sup>3</sup>

In spite of the smallness of the results of previous missions, which perhaps arose more from the selfish obduracy of the English Government at this time than from the inefficiency or supineness of the agents them-

<sup>1</sup> Hening's *Statutes*, vol. i., p. 127; British Colonial Papers, 1624-5, No. 9.

<sup>2</sup> Robinson Transcripts, p. 232.

<sup>3</sup> British Colonial Papers, vol. xxx., No. 51.

selves, the General Assembly, about 1674, had recourse to the same means as the only hope of securing a revocation of the royal grant of Virginia to Arlington and Culpeper made in the course of the year before. The first step of that body towards creating a fund to cover all the charges in sending agents to England was to lay a tax of fifty pounds of tobacco on every tithable during two years in succession; and to this sum was added a fine of from thirty to fifty pounds imposed on every person defeated in a suit in a county court, and of from fifty to seventy pounds should his case have been brought in the General Court.<sup>1</sup> Col. Francis Morryson, Thomas Ludwell, and General Robert Smith were nominated to represent the Colony in this mission; and they were also instructed to obtain the grant of a general charter, as a permanent guarantee of all those rights, liberties, privileges, and properties which had been bestowed from time to time. All hope of accomplishing the great objects in view was dashed by the Insurrection of 1676.

Jeffrey Jeffreys was, in 1691, appointed to serve as the agent of Virginia in London. In a general way, his duty was to consist of representing the Colony "in all public concerns" relating to it which might arise from time to time in the Mother Country. There were, however, certain special purposes to be carried out by him if possible; and should he foresee any difficulty in doing so, he was authorized to secure the counsel of a competent lawyer, and the assistance of men of note and quality who were influential at Whitehall: first, he was to lay before the King and Queen the different addresses framed by the General Assembly for

<sup>1</sup> Hening's *Statutes*, vol. ii., pp. 313-14.

presentation to them; secondly, he was to procure from the English archives copies of all the charters granted to Virginia in the past, and of every series of instructions given to its Governors in succession; thirdly, he was to obtain a new charter in confirmation of all previous rights and privileges bestowed on the people of the Colony; fourthly, he was to petition the two monarchs to refrain from making any gift of territory in Virginia without first consulting the General Assembly's wishes by communicating directly with that body, or with its agent in England; fifthly, he was to seek the restoration of the Northern Neck to the Crown's control as the first step towards placing that part of the Colony on the same footing as the remaining counties. In return for devoting his time to the accomplishment of these different objects, Jeffreys was to receive a grant of two hundred pounds sterling.<sup>1</sup>

When an address of exceptional importance was to be presented to the throne, it was the General Assembly's custom to dispatch a special envoy, with the document in his custody, to London. In 1696, the younger William Byrd was sent with such a document, and with him, in this honorable mission, was associated Mr. Povey.<sup>2</sup>

<sup>1</sup> Minutes of Assembly, May 22, 1691, B. T. Va., No. 23.

<sup>2</sup> The Governor's consent had to be obtained to give validity to an address framed by the House for presentation to the King; see Hartwell's Replies to Inquiries of English Commissioners, B. T. Va., 1697, vol. vi., p. 145.



## CHAPTER XXXIII

### Taxation: General History

NO regular system of taxation seems to have been in operation in Virginia previous to 1619, the year in which the first Assembly met and the self-government of the community really began. Down to 1617-18, the Colony was practically a single plantation owned by the London Company, and supported by the appropriations made by that body from time to time. It was the Company which bore the expense of the salaries paid the different officers, including the Governor and Secretary. From year to year, the hope was entertained that the income from the country's various resources would soon remove from the corporation so heavy a burden. One of the noblest indications of the broad public spirit and far-sighted beneficence guiding it in its relations with the settlements oversea was the provision made in 1618 for the inhabitants' indefinite relief from every form of public taxation; this provision consisted of assigning tracts of fertile land, very conveniently situated, for the particular support of each important officer associated with the government of the Colony, thus rendering unnecessary any public levy for his maintenance.<sup>1</sup> The area as a whole spread over at least

<sup>1</sup> Instructions to Yeardley, 1618, *Va. Maga. of Hist. and Biog.*,

thirty-one thousand acres; and in order to turn this ground, still in its virgin condition, to the highest advantage, the Company took immediate steps to send out to Virginia a large number of tenants and agricultural servants to engage in working the soil of each tract.

The dream of establishing a free community overseas, which would never be called upon to bear the heaviest burdens of public taxation, was only too soon dispelled. One of the influences leading to this sprang from the Massacre of 1622, an event that decimated and dispersed the inhabitants of the tracts of land set apart for the support of the different public officers. But even if this catastrophe had never occurred, general taxation (small at first, perhaps), would have been gradually introduced. The necessity of erecting fortifications seems to have caused the first imposition of a formal tax. The tax levied for this purpose amounted, it would appear, to five per cent. of every hundred represented in the value of each estate.<sup>1</sup> The necessity of placing a garrison in each newly constructed fort led to the imposition of the second formal tax. It was required by law in 1623 that every citizen failing to contribute "to the finding a man at the Castle" should pay for himself and his servants, a sum of five pounds of tobacco a head; and a very short time afterwards, a tax of ten pounds was levied on every tithable above sixteen years of age for the purpose of maintaining a corps to harry the

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vol. ii., p. 155. The term "public taxation" is used in contradistinction to "parish taxation" and "county taxation"—see Chapter xxxiv., for the difference between the public, parish, and county levies.

<sup>1</sup> *Va. Hist. Soc. Coll.*, vol. vii., p. 44.

Indians.<sup>1</sup> It was now only too clearly perceived that the subject of public taxation was certain to become of great importance; and the General Assembly soon adopted a regulation which, as we have already seen, was enforced with extraordinary strictness throughout the remainder of the century, namely, that no Governor should presume to lay a tax on the lands and commodities of the people without the express authority of the House of Burgesses itself; and all sums so procured were to be expended only in such manner as that body should prescribe.<sup>2</sup> This regulation was renewed in 1631-2, at which time the Council was also included in the scope of the law<sup>3</sup>; and again in 1642-3<sup>4</sup>; and still again, in 1645.<sup>5</sup>

Six years later, when the Colony submitted to the power of Parliament, it was expressly stipulated in the articles of surrender that no tax, custom, or imposition of any kind should be laid on the Virginians without the consent of the General Assembly.<sup>6</sup> During the period immediately following, the Governor and Council were still without the legal power to lay a tax of their own motion; when they assumed this power, apparently without permission, it is quite certain that they were acting under a general authority previously given them. In 1655, Governor Digges issued a proclamation in which, after declaring that the public levy was the only matter of business at that time to justify him in summoning the Assembly, and that the convening of

<sup>1</sup> Hening's *Statutes*, vol. i., pp. 127, 128.

<sup>2</sup> British Colonial Papers, vol. iii., No. 9; Hening's *Statutes*, vol. i., p. 124.

<sup>3</sup> Randolph MS., vol. iii., p. 218.

<sup>4</sup> Laws of Virginia, 1642-3, p. 3, Clerk's Office, Portsmouth, Va.

<sup>5</sup> *Va. Maga. of Hist. and Biog.*, vol. ii., p. 66.

<sup>6</sup> Randolph MS., vol. iii., p. 243.



that body would impose a heavy expense on the Colony, he went on to announce that, in harmony with the advice of leading citizens consulted by him, the Council and himself now gave a general order to the counties to levy a tax of ten pounds of tobacco on every tithable residing within their respective limits. The entire quantity collected in each county was to be left in the custody of the justices of its court, there, with the exception of what was disbursed for salaries, to remain until the next Assembly should give directions for its distribution.<sup>1</sup> Five years after this proclamation appeared, the Governor and Council were authorized by the House to lay and also to proportion the public levy for the following twelve months; but this seems to have been purely formal, as the House itself had already issued instructions as to what public expenses should be paid. The tax to be imposed was required not to exceed twenty pounds of tobacco a head. The grant in this case to the Governor and Council of the power to lay the levy was designed to do away with the cost of calling the Assembly together, a charge which, at this time, exceeded all the other public burdens united. It was expressly provided in the Act that this power should expire at the end of three years; or even earlier, should the Assembly meet in the interval. The continued desire to avoid public expense led to the renewal of the law.<sup>2</sup>

The Governor and Council, having been granted the right to impose a public tax subject to certain restrictions laid down by the Assembly, were, not unnaturally, eager to acquire this right independently of that

<sup>1</sup> This proclamation is recorded in Northampton County Records, vol. 1654-5, p. 109.

<sup>2</sup> Hening's *Statutes*, vol. ii., pp. 24, 85.

body's consent; and as a justification for its unreserved bestowal on themselves, they offered the specious reason that it would do away with the necessity of the House meeting so often merely to lay the levy, a step that always imposed a heavy expense on the Colony owing to the salaries to be paid the Burgesses during the course of a session. It is no ground for surprise to find that the most energetic effort to secure this right was made by the Governor and Council so soon after the Restoration as the General Assembly had had time to purge its membership of all persons associated with it during the period of the Commonwealth. Berkeley, in 1666, endeavored to induce this body to allow two or more Councillors to join with it in laying the levy and distributing the sums raised by this means; but the House, warmly resenting the suggestion, declared that it was the privilege of itself alone to lay the levy, and that it would not acknowledge the power of the Governor and Council to participate in the function unless specially authorized to do so by an Act of Assembly. These officials were forced to content themselves with this restriction, and to express their willingness to adopt it as "a rule to walk by."<sup>1</sup>

Culpeper was as anxious as Berkeley to obtain for himself and his Council the right of imposing taxes independently of the Assembly. He advocated the establishment of a permanent tax of twenty pounds of tobacco a head, which the Governor and Council should be empowered to levy without calling the House of Burgesses together,<sup>2</sup> or apparently without first obtaining its consent. His recommendation came to nothing, though earnestly supported by several Coun-

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 254.

<sup>2</sup> British Colonial Papers, vol. xlvii., No. 105.

cillors of great influence. For instance, Secretary Spencer, writing to the Board of Trade and Plantations in March, 1682-3, declared that the Government in Virginia possessed no fund with which to defray the charges of administration unless the House had first voted the amount needed; that formerly the Governor and Council were impowered to impose a tax not exceeding thirty pounds of tobacco a tithable; and that such a provision was entirely reasonable, as the cost of an Assembly summoned merely to appropriate money very frequently exceeded the total sum required to pay all the other public expenses.<sup>1</sup>

Howard raised an even louder protest against this powerlessness to impose an independent tax. In a letter to the Board of Trade and Plantations, dated February 10, 1685-6, he stated that the House of Burgesses had declined emphatically to give the Governor and Council the right to lay the smallest levy, although at one time such a right had been enjoyed by them. "Nothing has prevailed," he adds, "nor I believe will unless his Majesty's special command therein." How keenly the House resented Howard's attitude was shown by their refusal to add twenty-four soldiers to the number which that Governor had thought of equipping; and they also declined to agree to pay the expenses of any body of troops which the Governor and Council should order to be raised for the defence of the country.<sup>2</sup> The House at this time was in such a suspicious mood that it would not authorize the Governor and Council to levy a tax even for the erec-

<sup>1</sup> Colonial Entry Book, 1681-5, p. 101.

<sup>2</sup> *Ibid.*, 1685-90, pp. 95, 126. Howard closed his letter with the remark that "so many took liberty of speech upon the rebellion of the late Duke of Monmouth that I was fearful it would produce the same here."



tion of a small building like the Governor's projected mansion.<sup>1</sup> And so great was that body's opposition to the slightest encroachment on its right of taxation, that, in 1691, it offered strong objection to the items inserted in a list of expenditures which the Council, sitting as the Upper House, had directed to be incurred, such as the fees of messengers dispatched in the country's service to Maryland, Pennsylvania, and New York, and also the larger salary granted for the benefit of the clerk of the Upper House. These payments, it seems, only became legal after the House had approved them.<sup>2</sup>

An additional proof of the same feeling in the Burgesses will be found in two Acts passed in the course of 1692. The General Assembly had imposed a duty on liquors, which, for some time, had brought in annually a sum of about one thousand pounds sterling. This amount was chiefly expended for military purposes. Aware of this fact, the Burgesses authorized the Governor or Commander-in-chief to enroll troops such as would be sufficient in number to offer a successful defence of the Colony in case of an invasion. Had the two laws—the one providing for the tax on liquors, and the other for the muster of the militia for special occasions—been perpetual as to time, the Governor and Council would, to that extent, have been rendered independent of the House, for they could have raised troops from year to year without any further authorization, and would have had an ample fund for the payment of their expenses. The Assembly, fearful of the possible consequences of such independence, expressly declared that each of the two statutes should be temporary in its scope, a

<sup>1</sup> Minutes of Assembly, Nov. 2, 1685, Colonial Entry Book, 1682-5.

<sup>2</sup> Minutes of Council, May 16, 1691, B. T. Va., 1691, No. 29.

fact which would compel the Governor to summon the House at frequent intervals. "If we give away ye power of levying and maintaining at ye country's charge such an armed force without any limitation of time," they stated, "there would be no more creation for Assemblies because the Governor may do what he pleased without them."<sup>1</sup>

The firmness of the Burgesses was proof even against the English Government's strong disapproval. One of the instructions given to Howard in 1685 was to see that the General Assembly passed a law authorizing the Governor and Council to impose a tax, not exceeding a certain amount, to defray all public charges; and directing the same officials to account to the House for its expenditure. The object apparently was to confer on these officials a permanent right to lay the levy, the first step to complete independence in this respect of all interference on the Burgesses' part. This recommendation, or rather order, for it was no less in substance, not having obtained a very favorable hearing in the Colony, it was, in 1691-2, renewed in the instructions given to Andros; and now, as had so often been the case before, the justification advanced for bestowing on the Governor and Council the taxing power was that it would certainly relieve the country of the burden of too frequent Assemblies,<sup>2</sup> a fact that

<sup>1</sup> Memorial about College, B. T. Va., 1692, No. 118.

<sup>2</sup> Instructions to Howard, 1685-90, p. 37; see also Instructions to Andros, B. T. Va., Entry Book, vol. xxxvi., p. 123. That the right of taxing which it was proposed to confer on the Governor and Council was intended to be permanent is shown by the wording of the Instructions: Andros was ordered to use his "best endeavours that a law be passed empowering the Governor and Council for the time being to raise as there shall be occasion a general levy or tax for the better support of the Government." They were merely to account to the next Assembly.

would have been conclusive with the Burgesses themselves as to the advisability of the law had they not very rightly been afraid of establishing a principle, which, in the hands of unscrupulous officials, might be used to curtail seriously the power of the House and to diminish the people's freedom. Again there was no satisfactory response. Refusing to be discouraged, the Board of Trade and Plantations instructed Nicholson, when he was appointed to the Governorship, to renew the recommendation, still on the same ground. The Burgesses, apparently worn out by a repetition of the request, and the reason offered in its support, replied with unconcealed impatience: "We are of opinion that the holding of Assemblies to defray the charges of this his Majesty's Colony and Dominion is not at all burthensome or grievous to the inhabitants hereof, and that any other method of laying ye same would be very unjustifiable to the circumstances of this Dominion, and uneasy and inconvenient to the inhabitants."<sup>1</sup> No further suggestion of a change was made by the English Government during the brief interval preceding the end of the century.

The House of Burgesses, as the representatives of the people, never failed, when the occasion called for it, to insist upon their right to be taxed only with their own consent. They were merely loyal to the spirit of their whole past when they instructed their agents in England, Morryson, Ludwell, and Smith,—dispatched thither, about 1674-5, for the purpose of securing a general charter,—to have this right acknowledged and embodied in the text of that instrument; and if there was a disposition on the English Government's part to question it, to see that this doubt was dispelled before

<sup>1</sup> Minutes of Assembly, June 2, 1699, B. T. Va., vol. lii.



they proceeded to less important demands. The language used by the Burgesses in outlining the petition to be presented by these agents is especially memorable in the light of the great events occurring in the next century as the result of a firm refusal on the Americans' part to yield this same right: "It is humbly conceived that, if his Majesty deduce a Colony of Englishmen by their own consent, or license or permit one to be deduced, to plant an uncultivated part of the world, such planters and their heirs ought to enjoy by law in such plantation the same liberties and privileges as Englishmen in England, such plantations being but in the nature of an extension or dilatation of the realm of England,—that King James did by the charter to the Treasurer and Company declare that their descendants born in Virginia would be taken as natural-born subjects of England,—that neither the present King, nor any of his ancestors or predecessors, had ever offered to impose any tax upon this plantation without the consent of his subjects there."<sup>1</sup>

In the remonstrance which they drew up when the grant of the charter was practically refused, the agents, with emphasis, declared that it was the right of the Virginians, as well as of all other Englishmen, "not to be taxed but of their own consent, expressed by their representatives."<sup>2</sup> Throughout the negotiations, they had, in accord with their instructions, reiterated the assertion of this right in language not less firm because moderate and guarded:—"we hope," they said, "that our request will not be deemed immodest when it is considered that both the acquisition and defence of

<sup>1</sup> Randolph MS., vol. iii., p. 331; Hening's *Statutes*, vol. ii., pp. 525-6.

<sup>2</sup> *Ibid.*, vol. ii., p. 535.

Virginia have been at the charge of the inhabitants, and that the people at this time were at the expense of supporting not only the Government, but also the Governor, which occasions their taxes to be very high."<sup>1</sup>

In the instructions which the General Assembly, in 1691, gave to Jeffrey Jeffreys, the Colony's agent in London at that time, he was expressly directed to supplicate that no tax should be laid "on any of ye people of this country," but with the consent of their representatives. And the same body, having also declared that this was simply one of those "equal rights and privileges" to which the Virginians were entitled as clearly as if they were "natural-born subjects of ye realms of England," begged that they should be governed "after the same method" as Englishmen; and that they should have the "full benefit of ye great charter, and of all other laws and statutes regulating ye liberties of ye subjects."<sup>2</sup>

The momentous principle of the next century that "Taxation without Representation is Tyranny," so firmly pressed in substance by William Pitt in the cause of the large English communities that neither separately nor collectively possessed a member of Parliament, and so boldly proclaimed and sup-

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 526; Randolph MS., vol. iii., p. 328. In the Attorney-General's report to the Privy Council on the petition of Morryson, Ludwell, and Smith, he recommended the grant of their prayer that no tax should be laid but by common consent of the Governor, Council, and Burgesses, which he says has "been heretofore used." This report was approved by the Privy Council, but came to nothing; see Colonial Entry Book 1675-81, p. 41. By "common consent of Governor, Council and Burgesses" was meant simply that the assent of the Governor and Council was necessary to the validity of money bills passed by the House.

<sup>2</sup> Minutes of House of Burgesses, May 22, 1691, B. T. Va., 1691, No. 23.

ported by the American patriots in the defence of their own interests, had, nearly one hundred years before, found a voice in the utterances of the Virginia House of Burgesses. In proportion to population, a stamp Act passed in 1674 would have raised as great a commotion in the Colony then as it in reality did do in 1766, for the public sentiment in which opposition to taxation without the consent of the people's representatives, had its origin, was just as strong in the Seventeenth century as it was in the Eighteenth. The resolutions of Patrick Henry adopted by the House of Burgesses in May, 1765, would have had, so far as the principle involved in them was concerned, just as hearty assent sixty years earlier, had they been submitted to the Assembly at that time. There was nothing new in the spirit exhibited by the House in responding to the eloquence of the famous Revolutionary orator. The Burgesses of the Seventeenth century would, with equal firmness, have rejected the specious defence, suggested by the subtle brain of a great lawyer, that all classes and all interests of the British Empire were represented indirectly, if not directly, in the membership of Parliament, a claim tacitly admitted by the English themselves to be false when, in 1832, they, by passing the Reform Bill, placed the whole system of Parliamentary Representation on the footing which the American Colonists had long before asserted to be the only just one in relation to taxation.



## CHAPTER XXXIV

### Taxation: Public and County Levies

THERE were three tax levies, known respectively as the Parish, the County, and the Public. The parish levy was laid by the vestry of each parish; the county levy by the justices of each county; and the public by the General Assembly.

In a former chapter, I enumerated the usual purposes for which the parish levy was laid, such, for instance, as the building of new churches and chapels-of-ease, or the repairing of old; the purchase of glebes and the erection of houses on them; and the payment of the salaries due the clergy, readers, and clerks. The charges defrayed by the public levy consisted of claims against the public treasury approved by the House Committee on Claims. In a general way, they embraced the salaries of the Governor and other higher officers; the fees of the clerks of the General Assembly and its several committees; the wages of messengers and door-keepers; the expenses incurred by the militia whilst engaged in active service; the costs entailed in issuing writs of election, or in building or repairing the State-House; the rent to be paid when the Burgesses or Councillors and the General Court held their regular sessions or terms in private residences or taverns; and

finally, the charges imposed by the pursuit and arrest of runaway servants.<sup>1</sup>

The public levy for November, 1682, offers a fair example of the particulars usually forming a part of the public charges. The items which it contained included the cost to each county of laying off the site of a new town within its borders; the expense of repairing the forts, and maintaining the garrisons, and also a certain number of troopers and supernumeraries for a designated time; the sums due for horses killed or dying during the progress of a campaign against the Indians, or while the soldiers were stationed in the forts; the outlay for the transportation of Indian prisoners, and for the employment of Indian interpreters; the cost of furnishing friendly tribes with match coats, of conveying persons under indictment for criminal offences to Jamestown for trial, of transmitting public letters, of affording medical attendance to men engaged in the public service, and of impressing boats and rowers and supplying provisions for their benefit.<sup>2</sup>

The expenses met by the county levy were even more numerous:—in a general way, they embraced the outlay made necessary in building or repairing court-houses, erecting prisons, pillories, stocks, and whipping-posts; maintaining permanent bridges and ferries; holding coroners' inquests; paying the rewards for the destruction of wolves; remunerating the Burgesses for their services, and defraying their charges during their journey to or from Jamestown, before or after a session.

<sup>1</sup> Beverley's *History of Virginia*, pp. 203-4; *Present State of Virginia*, 1697-8, Section ix. The salaries of the highest public officers, such as the Governor and the Secretary, were also included in the public levy during the earlier decades of the century.

<sup>2</sup> Colonial Entry Book, 1682-95, p. 76.

It will be of interest to enumerate with even more particularity some of the special items in the levies of different counties, as perhaps giving a clearer idea of their varied character. Among the Lower Norfolk assessments for 1647 there is found an entry for a "case of drinke," probably supplied to the justices during a term of court. The entries for 1652 included the compensation allowed for the impressment of boats and rowers employed in the county's service; those for 1662 the grant of a large sum of tobacco to Richard Whitby in consideration of his "deplorable condition"; those for 1685, the cost of rum, beer, and sugar consumed when the accession of the new King was proclaimed. The Elizabeth City county levy for 1693 made appropriations to cover the expense of cleaning the court-house building, summoning the grand jury, procuring a new set of standard weights from England, sending a special messenger to Jamestown, and obtaining a full copy of the Acts of the last General Assembly. Among the items included in the entries for 1696 were the sums allowed for the encouragement of linen manufacture, and for the digging of the graves of paupers who had been supported by the county. The assessments for 1698 were to meet charges incurred by private individuals in providing food and lodging for the county's poor; and also to remunerate carpenters for erecting two pairs of stocks on the court-green and benches in the court-room, and for tearing down an old and dilapidated church edifice.

The items embraced in the levy of York county for the year 1647 included the expense of maintaining three ferries for public use; of impressing a boat and rowers in order to facilitate the journey of persons employed in performing public services; of providing shackles for



a convicted prisoner, and locks and keys for the county jail. Among the entries contained in the levy for 1659 were charges incurred for supplying prisoners with victual, and the justices with liquors. In 1662, appropriations were made for the erection of a tan house, and the maintenance of a public ferry at a convenient point; whilst the other expenses included the cost of impanelling a jury, of whipping a female offender, of providing food and lodgings for the judges of the General Court, and of conveying their horses to Jamestown. The levy for 1665 made allowance for the outlay entailed by the appearance in that court of ten witnesses from York, who had been summoned to testify in a case on trial there.

Among the items embraced in the levy for Henrico in 1677 was the cost of rowing the Burgesses to Jamestown. It also included the expense of hiring men and horses in the public service; of mending the royal arms; of paying the county ferryman and county clerk their regular salaries; and of purchasing copies of the Acts of the last General Assembly. The entries for 1678 included the charges for maintaining the public ferry and repairing the county prison. In the levy for 1682, there was an allowance to meet the cost of dispatching numerous messages in the public service, and also of erecting a pillory, whipping-post, and pair of stocks; whilst amongst the entries for 1684, there was an allowance for the fees paid the Secretary of the Colony as remuneration for drafting two commissions for the county justices. A similar item appeared in the levy for 1686. In the levy for 1687, an appropriation was made to meet the cost of the shackles provided for a negro criminal, and also the charges for conveying him by boat to the county seat; and in addition, there

was an appropriation for the purchase of glass to be used in the court-house windows. The entries for 1688 included the charges entailed by the imprisonment of certain offenders against the law; the entries for 1691, the cost of a town site, the fees paid for its survey, and the expense of supplying juries with food during the term of the court; the entries for 1692, the cost of repairing the county prison, of purchasing nails and hinges for use in the court-house, and of making two pairs of leg and hand irons; the entries for 1694, the wages for guarding a prisoner, and also the rewards offered for the manufacture of linen cloth.

In the levy for 1696 in Essex county, certain sums were allowed for sending an address to Jamestown to be submitted to the authorities there; for providing the clerk with the necessary furniture for his office; for cleaning the interior of the court-house; and for making a new door for the prison. The entries in the levy for 1698 included the rewards offered for the manufacture of linen, the wages paid the custodian of the court-house, and the fees due the sheriff for extraordinary services. The ordinary expenses, such as the payment of Burgesses' salaries, and the like, also constituted a permanent feature of the Essex levies, as of the levies of Henrico, York, and the other counties.

The entries in the Westmoreland levy for 1658 included the charges for the support of a certain number of soldiers, who probably had been called together for the defence of this county alone. Among the items in the levy for 1692 in Richmond was an allowance for the fees of an attorney employed in that county's service. The same levy also appropriated a large sum for the maintenance of three public ferries; and an additional amount to meet the outlay for attendance

on a venire at Jamestown, and to remunerate the Secretary of the Colony for drawing up the commission of the justices. The levy in Northumberland for January, 1682-3, made provision for the payment of the salary of the physician attached to Potomac Fort. It also appropriated money for the survey of the new town site; for the transmission of public letters; for the disbursement of witnesses' fees; for the arrest of runaways; and for the settlement of claims made by neighboring counties.



## CHAPTER XXXV

### Taxation : The Poll Tax

THE funds obtained by the public, county, and parish levies were raised practically by one form of taxation, namely, taxation by the poll. No permanent tax was imposed on land for these purposes because this kind of property was regarded as already sufficiently burdened by the quit-rent; no tax was laid on trade because it was thought that that branch of the Colony's interests was already overweighted by the export duty of two shillings a hogshead and the English customs; and none on live stock, such as horses, cattle, sheep, goats, and hogs, because looked upon as held insecurely, and as of uncertain value.<sup>1</sup>

Experiments with the design of making land, trade, and live stock subject to ordinary taxation were, however, tried at different periods of the century. An Act was passed in 1645, which provided that the public, county, and parish levies should, in stated proportions, be imposed on all visible forms of property. These proportions were to be as follows: the land-owner was to pay four pounds of tobacco for every one hundred acres in his possession; the owner of a cow also four pounds; of a horse, mare or gelding, thirty-two pounds apiece; of a breeding sheep, four pounds; and of a breeding goat, two. In addition, every tithable person

<sup>1</sup> *Present State of Virginia, 1697-8*, section ix.

was required to pay a tax of twenty pounds. This law was adopted on the ground that the prevailing form of taxation had become insupportable to persons in narrow circumstances.<sup>1</sup> Previous to the passage of this statute, the system of public, county, and parish taxation had been by the poll alone; in extending this system to visible property also, thus increasing the volume of income, the burden resting on the poorer individuals, who owned a very small amount of such property or none at all, was to that degree lightened. The poll tax would have continued to be the only tax even in 1645 but for the costliness of the Indian war then in progress. As it was, the greater scope now given to the operation of taxation was intended to be only temporary. In 1648, the law broadening this scope was repealed, and the poll tax alone retained.<sup>2</sup>

The poll tax was favored by the wealthier section of the community because it made the public burthens proportionately less onerous for them. Had the law of 1645 continued in force, it would have signified the double taxation of lands,<sup>3</sup> and also the taxation of a great area of unproductive soil along with the productive. During the period of the Commonwealth, when the General Assembly seems to have been more than usually responsive to the sentiment of the mass of citizens, that body frankly acknowledged that the poll tax laid a very heavy hand on the resources of the people at large; but recognizing that the chief land-owners should not be treated with injustice (for this would have been merely righting one wrong by inflict-

<sup>1</sup> Hening's *Statutes*, vol. i., p. 306. This law, somewhat modified however, was in force in 1647; see York County Records, vol. 1638-48, p. 299, Va. St. Libr.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 356.

<sup>3</sup> Lands were already subject to the quit-rent.

ing another), the same body decided to reduce the poll tax by imposing an export duty on every hogshead of tobacco shipped away from the Colony.<sup>1</sup> This was the first step towards substituting, at least in part, an indirect for a direct tax.

The Council joined Governor Berkeley in 1663 in favoring the transfer of the tax from tithables to the soil; but as the Burgesses disapproved of the proposition, no change was made. During the time of the Long Assembly, a body of men thoroughly representative of the landed interests, the insistence upon the continuation of the poll tax had indirectly a powerful influence in precipitating the Insurrection of 1676. The poorer section of the population again complained that this form of taxation was inequitable, because, under its operation, persons "who had nothing but their labors to maintain themselves, wives, and children, paid as deeply to the public as he that hath twenty thousand acres of land."<sup>2</sup> This statement was only correct in case the owner of so large a tract allowed it to remain entirely idle, an improbable condition; such a proprietor, almost necessarily requiring many laborers to work his fields, was compelled to meet, not only the tax imposed on his own poll, but also the tax imposed on the poll of every tithable in his employment; so that, after all, the expense to the large land-owner was in proportion to the number of his agricultural servants, without whom his estate would have been of no practical use to him excepting as a cattle range, and his position really that of the very poor man. The oppressiveness of the poll tax during the existence of the Long Assem-

<sup>1</sup> Hening's *Statutes*, vol. i., pp. 356, 491; vol. ii., p. 133.

<sup>2</sup> Letter of Giles Bland, April 20, 1676, Randolph MS., vol. iii., P. 353.



bly consisted, not in the principle of the tax, which on the whole was not very unequal in its legitimate operation, but in its abuse in actual practice by that body to gratify their spirit of extravagance. Giles Bland estimated, no doubt correctly, that the House of Burgesses, for every member belonging to it, imposed on the Colony an expense falling little short of five hundred pounds of tobacco a day, a huge sum in the aggregate when it is recalled that some of the counties contained only five hundred tithables.<sup>1</sup> In addition to these charges, which were defrayed by the poll tax, there were the numerous gifts made to the Governor, and the fund appropriated for the support of the three commissioners sent to England to obtain a new charter. The whole amount, when proportioned among the tithables, laid upon each taxpayer a burden under which even persons of large resources must have been very hard pressed. In the long run, the small land-owner was perhaps less able to bear this burden than the large; whilst freemen possessing no estate at all must have been almost crushed by it. It was from these two sections of the community, namely, the small land-owners and the persons without property, or with so little as to be unworthy of consideration, that Bacon's principal supporters were drawn; and not unnaturally so, for it was they who had most reason to complain of the administration of public affairs.<sup>2</sup>

Bland urged as a remedy for the real or supposed

<sup>1</sup> Letter of Giles Bland, April 20, 1676, Randolph MS., vol. iii., p. 353.

<sup>2</sup> The following from the records throws light on the sentiment of the people at this time respecting the taxes: "John Millby come to this depont's house and said he had been about ye county of Northampton amongst ye Inhabitants informing them yt they were much wronged by ye conditions in their taxes and levies and

inequalities of the poll tax that the fund obtained by the collection of the import duty of two shillings a hogshead should be applied more strictly to the necessary charges of the Government. Under the terms of the statute creating this duty, the proceeds were to be first used in payment of the Governor's salary; and any surplus was to be devoted to other public purposes. There was no authority given by that statute to distribute the income from the duty in the form of gifts. Should this income fall short of the Government's expenses, it was Bland's opinion that the deficit should be made good by a tax imposed on land. To this, he

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yt hee was employed to see them righted, and yt there were several who would bear him out in it, and yt he had a qualification from ye Governor to call a party of honest godly men together, who were to question ye commissioners for ye wrong they had done the county . . . ye county was not only wronged of this year's taxes, and levies, but in a great sum which hath been twice or thrice already paid for Mr. Pitts, and was now again to be paid, so that ye oppression of ye county were great and intolerable, whereof he, ye sd Millby, did inform ye people, etc." The county court hearing of the charges made by Millby, denounced him for "lyes and false information"; see Northampton County Records, vol. 1657-64, pp. 97-9. It is stated in the records of Surry County for 1673, that "a Company of seditious and rude people to ye number of fourteen did unlawfully assemble at ye Parish Church of Lawnes Creek with intent to declare that they would not pay their publike taxes, and yt they expected diverse others to meet them, who faileing, they did not put their wicked design into execution . . . Not being satisfied with their former unlawful meeting, did, this day, the greatest part of them, meet together in the old field called ye Devill's Field . . . they have unanimously agreed to justify their meetings persisting in ye same . . . and ye mutinous persons aforesaid being so numerous, we have commanded ye aid of several of ye neighbourhood for their security." One witness stated that everybody in the county declared the "levys unreasonable"; another that the so-called mutineers did intend only "civilly to treatre concerning ye levy"; and this seems to have been the real spirit of this meeting; see Surry County Records, vol. 1671-1684, p. 62.

claimed, no objection would have been offered by the majority of the land-owners had they only brought the whole surface of their estates under cultivation; but not having done this, they raised an outcry against such a tax on the ground that it placed a burden on soil not only wholly unproductive, but also subject already to the royal quit-rents.

The people at large, however, continued to insist that the only proper direct tax to impose was a tax levied on the soil. In the series of grievances submitted by the several counties to the English Commissioners after the Insurrection of 1676 had been suppressed, one of the changes most frequently advocated was that "every man should be taxed according to his estate, whether real or personal, but in lands especially."<sup>1</sup> This is recognized in our own times to be the most reasonable basis of taxation, but during the Seventeenth century no consideration in its favor led to the permanent substitution of a land tax in whole or in part for the poll tax. Popular sentiment only, in a measure, became reconciled to it when, as the years passed, its amount was greatly lessened by the proceeds from the indirect taxes imposed by the General Assembly. Complaint of its inequalities was heard as late as 1683<sup>2</sup>; and so

<sup>1</sup> See, for instance, James City County Grievances, Winder Papers, vol. ii., p. 247.

<sup>2</sup> Culpeper wrote as follows: "His Majesty should lay his strict command on the next Assembly not to raise money by tithables (except only 20 pounds per poll, pursuant to the desires of several counties and advice of the Council, by the Governor and Council without calling an Assembly), but by a duty on brandy and other liquors, or almost any other way." He pronounced the taxation of tithables "unequal and chargeable in the raising of at least 20 per cent., causing prodigious quantities of fresh tobacco to be made, which not only clogs the market, but disparages the commodity"; see British Colonial Papers, vol. xlvii., No. 105.



influential was the opposition to it still, that, during that year, the Board of Trade went so far as to recommend the abolition of the tax. Howard, on his appointment to the Governorship, was instructed to see to the adoption in its stead of one that would prove to be more generally acceptable; and the like direction was given to Andros in 1691-2, an indication that the Burgesses had, in the interval, refused to alter the prevailing method of raising the funds necessary to meet the expenses of administration. A similar direction given to Nicholson at the end of the century met with the same resolute hostility; when that Governor urged the House to change from a poll to a land tax, this body replied that, in their opinion, the "levy by the poll" was the best and most equal method of defraying the public charges, inasmuch as the principal part of every citizen's personal estate consisted of servants and slaves, the two classes constituting the bulk of the Colony's tithables. The House stated that no complaint was now ever made in Virginia of the poll tax because, whenever the requirements of an extraordinary occasion called for a larger income, the difference was now always obtained by a duty placed on imported liquors.<sup>1</sup> This was, no doubt, the chief reason why the poll tax did not at this time arouse the bitter opposition formerly shown towards it; but it is probable also that, as the number of slaves brought into the Colony increased (a kind of tithable perhaps more certainly returnable for taxation than the ordinary white servants, who relatively diminished in number as the end of the century approached), it was felt that the poll tax became more equitable in its operation. The ease with which negroes were

<sup>1</sup> Minutes of Council and House of Burgesses, June 2, 1699, B. T. Va., vol. lii.

procured led to the extension of the area of land under cultivation; the number of slaves became perhaps the truest indication of the means of a land-owner, for through them, a higher degree of profit could be derived from the soil than even through white servants. In taxing the tithables of each estate,—who, towards the close of the century, were chiefly negroes,—the Assembly, county, and parish really taxed the owner's greatest source of wealth; and as the slaves grew in number, the rich came to bear more and more the different public burdens.



## CHAPTER XXXVI

### Taxation: The Tithables

NUMEROUS Acts were passed during the Seventeenth century simply to define precisely what section of the community constituted tithables. The first poll tax, which was adopted in 1623, was imposed on every "planter" above eighteen years of age residing in the Colony, whilst the second, adopted after a short interval, was imposed upon every male person whose age exceeded sixteen. It was required by law in 1657-8 that all white male servants under articles of indenture imported into Virginia after that date, however young, should be made subject to the county levies; and that all imported negro slaves, above sixteen years of age, whether male or female, should be held equally liable. The children of natives of the Colony professing the Christian faith were not to be included among the tithables until their age should exceed sixteen years; and the same rule applied to the children of freemen who, before or after their children's birth, had settled in Virginia. In 1661-2, these regulations were readopted. Indian servants were now sufficiently numerous to be brought within the scope of the same law, and they also became subject to the poll tax as soon as they had reached their sixteenth year.<sup>1</sup> By an Act passed in 1662, all women who were

<sup>1</sup> Hening's *Statutes*, vol. i., p. 454; vol. ii., p. 84. See also Revised Acts, Colonial Entry Book, vol. lxxxix., p. 21.



commonly engaged in working the fields were to be reported as tithables; and it was within the province of the county court to decide whether or not a woman, however employed by her master, came within the scope of this designation.<sup>1</sup>

The officers appointed to make out a full list of all tithables residing in a county were, in 1672, instructed to report the whole number of negro, mulatto, and Indian children, with a statement as to their respective ages sworn to by their masters. As an additional precaution, the owners of such children were required to enter the latter's names in the parish register within twelve months after the date of birth; and should this regulation be disregarded or neglected by any one, he was, in every such instance, to be compelled to pay the poll tax just as if the child were really of the tithable age.<sup>2</sup> About eight years after the adoption of this rule, it was thought to be so unfair that children, whether white or black, should be made subject to the poll tax at a time when, by reason of their youth, they were physically incapable of work, that an Act was passed requiring the owner of young negro slaves imported into the Colony, to bring them into court within three months after their arrival in Virginia, there to have their respective ages correctly adjudged and permanently recorded. Such children were not to be accounted tithable until they had reached their twelfth year, whilst no imported white servant was to be made liable to the poll tax until his or her fourteenth year had been passed.<sup>3</sup> The age at which the Indian

<sup>1</sup> Hening's *Statutes*, vol. ii., pp. 170, 187. Every negro woman who had been emancipated was required to pay the poll tax; see Hening's *Statutes*, vol. i., p. 267.

<sup>2</sup> Hening's *Statutes*, vol. ii., p. 296.

<sup>3</sup> *Ibid.*, p. 480.

woman was subjected to the same tax was fixed at her sixteenth year; and this appears also to have been the age at which the negro woman born in the Colony became a tithable.<sup>1</sup> All servants imported into Virginia by merchants and remaining unsold up to June 10th, were not bound to be listed that year for taxation.<sup>2</sup> At the close of the century, the persons subject to the poll tax were all white persons of the male sex whose age exceeded sixteen, all white women employed in tilling the ground, and all slaves, both male and female, who, if born in Virginia, had passed their twelfth year, or if imported, their fourteenth.<sup>3</sup>

How were tithables listed for taxation? The rule in 1646 was for each county court to appoint "able and discreet persons" to draw up a complete list of all tithables residing within the boundaries of the county; and this list, so soon as it was made out, had to be returned to the justices, who, having examined and found it satisfactory, in their turn transmitted it to the office of the Secretary at Jamestown for submission to the House. By this means, the Burgesses were, from year to year, kept informed as to the taxable basis of the Colony at large.<sup>4</sup>

<sup>1</sup> Colonial Entry Book, vol. lxxxix., p. 140.

<sup>2</sup> Henning's *Statutes*, vol. ii., p. 488.

<sup>3</sup> Letter of Andros, April 22, 1697, B. T. Va., vol. vi., p. 74.

<sup>4</sup> A full list for all the counties will be found in B. T. Va., 1699, vol. vii., p. 319. In 1646, lands, cattle, horses, etc., formed a part of the basis of taxation; Henning's *Statutes*, vol. i., pp. 306, 329. The collectors chosen in accord with the provisions of the Act of 1647 were ordered to exhibit a complete list of the tithable persons residing within their respective limits; see Lower County Norfolk Records, vol. 1646-51, p. 94. "Ordered by this Court that ye several persons hereunto mentioned, ordered and appointed within their severall precincts for their bringinge in of their sev'ral Lists of all tythable persons, and of their severall ages, shall bringe ye same

A statute adopted in 1657-8 required the head of every household to return a list of the tithables embraced in his own family; and this, no doubt, included, not only his own children, but also every person in his employment. This list was to be made out during the month of June, and presented to the clerk of the county court.<sup>1</sup> It was not long before it was perceived that heads of families could not be trusted with implicit confidence to draw up a complete list of the tithables, for even when not actually dishonest, they were disposed to stretch every possible point in their own favor. When this fact came to be clearly recognized, the law was repealed, and the sheriffs were impowered to make out the lists.<sup>2</sup> This duty seems, in some of the counties, to have been assigned to the constables<sup>3</sup>; but these officers' reports, no doubt, had to be examined by the sheriffs before being submitted to the justices. There was still so much fraudulency in the returns that, two years afterwards, the General Assembly passed an Act requiring each county to be divided into several tax precincts, and a special commissioner to be appointed in each to draw up an accurate list of the resident tithables. This list, which was to be handed in to the county court at its August sitting, was to be accompanied by the reports made to the commissioner by each head of a family as to the number of tithables embraced in his household. The clerk of the county court was required to transmit all these papers to the

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to the clerke of ye Court by ye Fifteenth day of July next ensuing, vizt." The boundaries of the several precincts are then defined; see Lower Norfolk County Records, vol. 1651-56, p. 12.

<sup>1</sup> Hening's *Statutes*, vol. i., p. 454.

<sup>2</sup> *Ibid.*, p. 521.

<sup>3</sup> See Lower Norfolk County Records for 1658.



clerk of the General Assembly not later than the second day of the September term of the General Court.<sup>1</sup> Under the provisions of this comprehensive Act, all the counties, as their records at this time show, were laid off in precincts, and commissioners named to perform the special duties assigned them.<sup>2</sup>

The justices of Lower Norfolk, in 1669, assigned to each precinct in the county one of their own number as the officer empowered to draw up a complete list of the tithables residing in that precinct at this time.<sup>3</sup> This rule appears to have also prevailed elsewhere in the Colony; and it remained very generally in force down to the end of the century. In each precinct, the head of every family to be found there continued, during this long period, to report the number of tithables subject to his authority; this was done every year, certainly after 1680, between the first and tenth of June; and at such place as the justice, or special commissioner for that precinct, had beforehand publicly chosen for the purpose. As soon as the list for each precinct had been submitted to the county court as a body, an order was issued that it should be set up at the door of the courthouse, so that the failure of any householder to report the full number of his tithables might be detected by the other taxpayers, who were always eager to expose

<sup>1</sup> The Commissioner's first step towards obtaining the lists of the tithables residing in his district was to give a notice in writing (which was read and set up at the door of the church or chapel-of-ease) of the limits of his special precinct, and of the day on which the lists must be brought in. This day was to precede June 10; Hening's *Statutes*, vol. ii., pp. 19, 84.

<sup>2</sup> For examples, see York County Records, vol. 1657-62, p. 419, Va. St. Libr. Northampton County Records, vol. 1657-64, folio, p. 167. The Act was renewed in 1663; see Hening's *Statutes*, vol. ii., p. 187.

<sup>3</sup> Lower Norfolk County Records, Orders June 16, 1669.

such delinquency, as it increased their own burden by diminishing the number of persons subject to the levy. One of the complaints offered by the counties to the English Commissioners after the collapse of the Insurrection of 1676 was that the justices and clerks of the county courts had, for some years, declined to publish these lists, and had thus deprived the people of the opportunity of discovering any error or fraud on the part of heads of families in stating the number of their tithables.<sup>1</sup> A false return to the commissioner of a precinct was, from an early date, punished with severity. The penalty in 1646 for concealing a tithable was fixed at double the quantity of tobacco payable had his existence been reported; this was afterwards increased to treble the quantity and so continued to a period as late as 1662.<sup>2</sup> In the closing years of the century, the penalty for concealing a tithable was his confiscation if he happened to be a slave.<sup>3</sup>

The number of tithables found in the Colony during the Seventeenth century steadily increased with its

<sup>1</sup> Winder Papers, vol. ii., p. 207; see also Henrico County Minute Book, 1682-1701, p. 53, Va. St. Libr.; Essex County Records, Orders May 10, 1692; Lower Norfolk County Records, Orders July 19, 1693; York County Records, Orders May 24, 1694; Elizabeth City County Records, Orders May 18, 1696; *Present State of Virginia*, 1697-8, section ix.

<sup>2</sup> The exact language of the statute of 1646 was: "All persons concealing shall for every tithable &c pay double the rate this present General Assembly hath assessed"; Hening's *Statutes*, vol. i., pp. 329, 454; vol. ii., p. 84. An offence of this kind was defined "as a fraudulent intention to enlarge the taxes of such of his Majesty's subjects as do conform to the laws." That it was sometimes sought to conceal more than one tithable is shown by the charge brought against Mrs. Nicholas Spencer, in 1692, of not returning twelve; see Westmoreland County Records, Orders Feb. 22, 1692.

<sup>3</sup> *Present State of Virginia*, 1697-8, section ix.

The total amount assessed  
was divided by no. of  
Henings Statutes: v. 2

growth in wealth and population. Culpeper, in 1681, estimated the number at fourteen thousand; and before the year 1700 arrived, the fourteen thousand had swelled to about twenty thousand.<sup>1</sup> The number of tithables owned by individual planters varied very widely,—as widely, indeed, as the areas of their respective landed estates. The condition in this respect prevailing in Surry county from 1668 to 1700 was fairly representative of all the counties. In the course of 1668, the average number of tithables to each landowner residing in Southwark parish was only two, whilst the greatest number reported by any single citizen of that parish did not exceed six. Benjamin Harrison submitted a list of five, but as he was a member of the House, he, no doubt, took advantage of his right as a Burgess to obtain a release from the taxation of the additional tithables in his possession. During the same year, there were three planters owning estates in Lawne's Creek parish who respectively reported a list of eight; the average number to the land-owner at this time, however, still did not exceed two. One citizen only in 1669 returned so great a number as thirteen tithables; the next followed with but six. During 1670, the principal taxpayers seem to have been Arthur Allan, who possessed twelve tithables, Charles Amry, who possessed eight, and Colonel Thomas Swann, who possessed seven. Swann was a member of the Council, and as such exempted from the requirement of making a full return. The number of tithables reported in 1674 by Francis Mason was ten; by George Jordan, eight; and by Nicholas Meriweather, seven. In the succeeding

<sup>1</sup> British Colonial Papers, vol. xlvii., No. 105; *Present State of Virginia, 1697-8*, section ix.; B. T. Va., 1698, vol. vi., p. 74; vol. vii., p. 319.



year, Mason gave in a list of fourteen tithables, seven of whom were negro slaves. The number reported in the same year by Robert Canfield was six; by Colonel Swann, seven; by Lawrence Baker and Rev. William Thompson, eight respectively; and by Arthur Allan, nine. The general average of the number owned in the several precincts in 1675 ranged from one and a tenth to two and a third, whilst, in 1688, the average in some precincts rose to three, but in the majority did not exceed two. During this year, the largest number of tithables returned was fourteen; there were also holdings of ten, eight, and six reported.<sup>1</sup>

<sup>1</sup> See Surry County Records for these different years. In 1666, the highest number of tithables returned by any single landowner of Northampton county was fifteen, the next highest, ten, and the next, eight; see *Va. Maga. of Hist. and Biog.*, vol. x., pp. 194, 258.

## CHAPTER XXXVII

### Taxation: The Assessment

WHO assessed the levies? The assessment for the parish levy was made by the vestry. The duty of apportioning the public levy no doubt fell on the House's Committee on Claims, who, however, were required to submit their decision to the full House for approval. The proportion to be borne by each tithable was obtained by dividing the total amount of the assessment by the whole number of tithables residing in the Colony as reported to the Secretary's office by the justices of the different county courts. The apportionment for public purposes was of two kinds:—first, the one made for an object promotive of the welfare of all the counties, and, therefore, falling upon them all in proportion to their respective number of tithables; second, the apportionment made in part for all the counties, and in part for particular ones. The latter section of this second apportionment was imposed on these particular counties alone, and to that extent, the burden was unequal; but this was not unjust, as they alone had enjoyed the benefit, for which the restricted tax had been laid.

Let us first consider the apportionment which was general in its scope. The amount of this differed from year to year, as may be shown by actual instances.

In 1623-4, the tax imposed upon every male head in the Colony above sixteen years of age was fixed at ten pounds of tobacco; this was a special levy to provide funds to meet the outlay of a projected expedition against the Indians.<sup>1</sup> Fifteen years later, there was another special levy, this time of four pounds per poll, for the benefit of the Governor, whose services were thought to be deserving of particular recognition.<sup>2</sup> Both of these assessments were small in volume; but when it was designed to cover all the public expenses, the amount to be paid even by the individual taxpayer represented a large sum; for example, in 1640, the tax imposed on each tithable rose to one hundred and eighty pounds of tobacco.<sup>3</sup> Three years afterwards, however, it sank to nine pounds.<sup>4</sup> In 1682, the public assessment amounted to eighty-nine pounds per poll; in 1691, to eighteen and a half pounds; in 1692, to seventeen and a quarter; in 1693, to thirteen and three quarters; in 1694, to twenty-one; in 1695, to twenty-two and three quarters; in 1696, to sixteen; and in 1699, to nineteen.<sup>5</sup> Unless there was some extraordinary public expense to swell the levy, the average tax per poll for public purposes seems rarely to have exceeded twenty pounds of tobacco. It was well that the public assessment was generally light, for had it been heavy, it would, when added to the county and parish levies, have created a burden which would have been intolerable.

<sup>1</sup> British Colonial Papers, vol. iii., No. 9.

<sup>2</sup> Acts of Assembly, 1639, Robinson Transcripts, p. 232.

<sup>3</sup> Robinson Transcripts, p. 22.

<sup>4</sup> Hening's *Statutes*, vol. i., p. 279.

<sup>5</sup> Colonial Entry Book, 1682-95, p. 93; see also entries in same volume for April 28, 1692; Hening's *Statutes*, vol. iii., pp. 97, 106, 124, 135.



If the public assessment fell more onerously on one county than on another, it was always due to the fact that the county more heavily taxed had enjoyed some special advantage at the public expense. York, for instance, with twice as many tithables residing within its borders as Isle of Wight possessed, might nevertheless be called upon in a single levy to pay only one half as much, simply because the benefit it had obtained, as compared with that obtained by Isle of Wight, was just one half as great. This difference constituted the basis of the relative tax proportion. When the assessment was of a mixed special and general character, it was customary first to designate the amount to be paid by the Colony at large; which was proportioned to each county according to the number of tithables among its inhabitants. There was levied, in 1682, a tax amounting, as a whole, to 1,349,418 pounds of tobacco; and of this large sum, 699,953 pounds were contributed by the counties in proportion to their respective number of tithables; while the remainder was contributed by the several counties deriving special benefit from some public service extended to them alone. Each county obtained full information as to the share of the public charges which it was expected to defray, from a copy of the "list of the public levy" furnished by the clerk of the House of Burgesses.<sup>1</sup>

The county levy was assessed by the justices of the county court. As this constituted the most onerous

<sup>1</sup> Middlesex County Records, Orders October 2, 1677; Colonial Entry Book, 1682-95, pp. 75, 93. The levy for 1684 amounted to 702,423 pounds of tobacco. In the Henrico County Levy for Oct. 12, 1691, an allowance was made Peter Beverley, the clerk of the House, for a copy of the "List of the Public Levy"; see Records, vol. 1688-97, p. 249, Va. St. Libr.

tax borne by the people, it was not unnatural that the judges' fairness in drawing up the list of expenses to be paid was sometimes subjected to popular suspicion. This suspicion, as we have seen, was especially strong during the last sittings of the Long Assembly; and there was probably then just ground for its entertainment, since the bad example set by that body had exercised a demoralizing influence upon every other public body convening in the Colony. When, in 1676, the General Assembly, acting under the inspiration of Bacon and his immediate supporters, undertook to remedy the serious abuses which had crept in during the more recent of the previous years, it expressly stated that it was only in some counties that the justices were supposed to have inserted improper grants in the levies in their desire to show favor to particular persons. The General Assembly, however, considered the charge against these officers sufficiently well founded to make expedient the passage of an Act which provided, as a means of checking any possible unscrupulousness on their part, that thereafter "some of the discreetest and ablest" of the inhabitants of each county, equal in number to the number of the justices, should be yearly chosen by a majority of the "householders, freeholders and freemen of each parish"; and these, together with the churchwardens and the justices themselves, were to lay the county levy.<sup>1</sup> This regulation remained in force for a short time only, either because it proved cumbrous and inconvenient, or because, which seems more probable, confidence in the justices had returned with the improvement in the administration of public affairs, for to the latter

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 357.

was again confided the exclusive task of laying the county levy.<sup>1</sup>

In making the annual assessment, the justices of each county, no doubt, met in their usual apartment in the court house.<sup>2</sup> The same month was not adopted in all the counties as the time for laying the levy; in some, the justices appear to have convened for this purpose in October; in others, in November. Sometimes, the justices of the same county would meet in October, sometimes in November; and should no quorum be present at the November session, they would again assemble in December.<sup>3</sup> The levy was laid towards the end of autumn because the crop of tobacco for the year had, by that time, been cured, and was ready for shipment to England.

In making off the county levy, the ordinary course seems to have been to draw up a list of the amounts due to persons in whose debt the county stood for various forms of service. These amounts were then added up, and the total sum thus obtained was divided by the

<sup>1</sup> Culpeper, who was in the habit of employing vigorous language, which probably expressed more than he really meant, declared that "the county levy was most commonly managed by sly, cheating fellows that continue to defraud the public." He then perhaps disclosed his real purpose in using such defamatory words by remarking: "The levy ought to be inspected and supervised by the Government"; see *British Colonial Papers*, vol. xlvii., p. 105.

<sup>2</sup> In 1677, Surry county complained to the English Commissioners that the justices, in laying the levy, retired to their private room. As this conduct was made a ground of grievance, it was, no doubt, characteristic only of the demoralized period preceding the Insurrection of 1676; see *Surry County Grievances*, 1677, *Winder Papers*, vol. ii., p. 162.

<sup>3</sup> See Proclamation of Andros requiring York county justices to meet in December. The number of justices present on the usual day in November for laying the levy had not been sufficient to transact business; see *York County Records*, vol. 1694-97, p. 327, Va. St. Libr.



number of tithables shown by the last reports of the precinct commissioners to be residents of the county; in this way, the proportion to be paid by each tithable was ascertained.

For sake of convenience, the assessments for public, county, and parish purposes were generally embraced in the same levy, but the items belonging to each account were kept separate.<sup>1</sup> The laying of the county and parish taxes was not infrequently deferred in order that the public assessment might be included; if, however, the House, without agreeing upon such assessment, adjourned to a date so late in the year that all the tobacco of the preceding season was, by that time, certain to have been disbursed in one way or another, then the county court, unwilling to run any risk, proceeded to lay the county levy without waiting until the details of the public had been formulated.<sup>2</sup>

The rates at which tobacco was to be valued in making out the levy were fixed from time to time; and were always governed more or less by the contemporary prices prevailing in the English market. As the production of the commodity increased, these rates steadily fell off,—in 1619, tobacco of the best quality was sold for three shillings a pound, and tobacco of the meanest for one shilling and sixpence; whilst in 1645, the average price did not exceed threepence, a decline in two decades and a half of about two shillings a pound. The average price had, by 1661, further shrunk to twopence; twenty-one years later, a pound of tobacco of the finest quality was sold

<sup>1</sup> See for an example, levy for November 9, 1681, in Northumberland Records.

<sup>2</sup> An instance is recorded in Henrico County Minute Book, 1682-1701, p. 115, Va. St. Libr.

for this amount, but if of an inferior quality, for one penny only.<sup>1</sup>

From an early period in the Colony's history, exemption from the poll tax was either permanently or temporarily allowed for special reasons. In February, 1623-4, the General Assembly conferred this privilege upon all planters who were residing in Virginia previous to Sir Thomas Gates's last arrival, or who had come in with him on that occasion; and the like privilege was also extended "to their posterity," a term embracing, no doubt, only the children of the first generation. Even this remaining band of first settlers were required to pay the dues assessed for the support of the clergy and the maintenance of the Church.<sup>2</sup> The same Act was renewed thirty-five or more years after its first passage, although, at this time, the survivors of that early period, or even the children of those who had lived down to a date as late as 1624, could not have been numerous; but this fact gave all the more sentimental distinction to the exemption in their favor.<sup>3</sup>

Exemption from the poll tax was sometimes allowed to persons who had agreed to settle at some point on the frontier considered to be peculiarly dangerous from its liability to Indian incursions; such was the return

<sup>1</sup> Hening's *Statutes*, vol. i., p. 316; vol. ii., pp. 99, 506; Burke's *History of Virginia*, Appendix xlv.; *Present State of Virginia*, 1697-8

<sup>2</sup> British Colonial Papers, vol. iii., No. 9.

<sup>3</sup> Hening's *Statutes*, vol. i., p. 460; vol. ii., p. 84. About 1662, John West and his family were exempted from the payment of the poll tax in consideration of the services of their ancestors; see Hening's *Statutes*, vol. i., p. 547. We find the following entry in the Northampton Records (vol. 1657-64, p. 18), which is interesting as showing the popular spirit prevailing during the time of the Commonwealth: "This day Mr. Francis Broughton petitioned to be freed from taxes, which was granted by ye Commissioners and by ye consent of ye People."

made, at an early date, to those who had seated themselves on lands situated between the heads of Archer's Hope and Queen creeks. As a rule, exemption for such a reason was to last only for a definite period.<sup>1</sup> In 1661-2, relief from the poll tax for a specified time was granted to all artisans who, having given up cultivating tobacco, were devoting themselves exclusively to the pursuit of their trades.<sup>2</sup>

This privilege was sometimes allowed to a person prevented from working in the fields by some physical disability with which he was afflicted. For instance, in 1686, Samuel Goare, of Rappahannock, asked for relief from the poll tax on the ground that he had lost one of his arms; and there were four petitions of the same general character presented to the justices of this county in the same year, and on the same occasion.<sup>3</sup> About 1645, Robert Porter and Robert Jones, two citizens of Lower Norfolk, were exempted on account of their great age, a reason frequently accepted by the justices, especially if the petitioner had long resided in the county, and possessed no laborers to produce crops of corn and tobacco for his support. Sometimes, advanced years were considered to be a sufficient excuse simply because the petitioner was hard pressed to maintain a large family of young children.<sup>4</sup> In

<sup>1</sup> Hening's *Statutes*, vol. i., p. 199.

<sup>2</sup> *Ibid.*, vol. ii., p. 85; see also p. 179.

<sup>3</sup> Rappahannock County Records, Orders May 19, July 7, 1686. A father was generally relieved of payment of the poll tax in the case of an idiot son; see Henrico County Minute Book, 1682-1701, p. 229, Va. St. Libr.

<sup>4</sup> Lower Norfolk County Records, Orders June 16, 1645, Dec. 10, 1673; also vol. 1646-51, p. 157. The following is from the Henrico Records: "Evan Owen, an aged, indigent person having a wife and two small children, exempted from tax"; see Minute Book 1682-1701, p. 54, Va. St. Libr.



granting relief on the score of age, no discrimination was made against persons of the African race. Among the tithables of that race who sought relief was Abram Saby, of Elizabeth City, who claimed to be one hundred years old. A negro woman, also a resident of this county, obtained, about 1696, the same privilege on the score of age almost as great.<sup>1</sup>

Relief from the poll tax was granted to black as well as to white persons on account of their long residence in the Colony. In 1652, for instance, Anthony and Martha Johnson, of Northampton county, were exempted because they had been living in Virginia for more than thirty years, a fact indicating that they had arrived in the James River as a part of the memorable cargo of the Dutch ship which had landed so many slaves in 1619. In passing favorably on their petition, the court dwelt upon their prolonged labors, and the good example they had set in obtaining their livelihood, and also upon their heavy losses in a recent fire. The exemption was also extended to their two daughters, upon whose exertions the old couple were now probably dependent for their subsistence.<sup>2</sup>

<sup>1</sup> Elizabeth City County Records, vol. 1684-99, pp. 2, 117, 118; see also General Court Records, Robinson Transcripts, p. 261.

<sup>2</sup> Northampton County Records, vol. 1651-54, folio p. 161. In a case presented to the consideration of the Henrico county justices, in 1697, it was decided that physical disability in a negro slave was not a sufficient reason for granting relief. See Records, Orders June 1, 1697. Sickness was a frequent ground of exemption in the case of a freeman or freewoman; see, for instance, Elizabeth City County Records, vol. 1684-99, pp. 117-18. The following shows that the justices were sometimes imposed on: "Several persons, inhabitants in this county, having of late tymes falsely represented themselves to this court as objects of their charity, and by such means obtained to be acquitted from payment of levies and tithes, thereby abusing this court's benignity and wronging others . . . for remedy whereof for the future, and that this

As has already been pointed out, the occupation of certain high official positions carried with it the privilege of relief from the poll tax. By the law of 1661-2, each member of the Governor's Council was granted exemption, not only for himself as one individual, but also for ten of his servants, from all public charges except those imposed for the maintenance of the clergy and the Church. Should a minister filling a pulpit in the Colony be required to be present in the General Court or General Assembly, under an engagement, it would seem, to preach for a definite season, he was to be allowed the like relief for himself and six of his dependants.<sup>1</sup> The Governor and his servants were also exempted from the operation of the poll tax<sup>2</sup>; and so, to a certain extent, were the Burgesses.

What was the amount of the tax generally imposed by the county levy? This, like the amount assessed in the public levy varied materially from year to year. The grievances submitted by the several counties in 1677 declared that the poll tax collected in 1675 was unprecedented in its excessiveness.<sup>3</sup> It appears that the levy for this year was made especially heavy by an effort to purchase from Culpeper his whole interest in

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court may not be futuere imposed on, and surprised by such impostors, and the truly necessitous want relief, it is ordered that henceforward no person whatsoever be exempted from payment of levies by order of this court but such as shall produce a certificate from the vestry of that parish where they inhabit that they are objects of charity and are allowed a maintenance from the parish"; Westmoreland County Records, Orders May 25, 1692.

<sup>1</sup> Down to the meeting of Bacon's Assembly, as stated already in the account of the clergymen's remuneration (Part I), the clergyman, along with six of his tithables, was exempted from taxation. After that date, he alone was relieved from the different levies.

<sup>2</sup> Hening's *Statutes*, vol. ii., pp. 84, 392.

<sup>3</sup> Winder Papers, vol. ii., p. 230; see particularly the Grievances of Rappahannock County.

that part of Virginia known as the Northern Neck,<sup>1</sup>—how heavy was shown by the fact that, independently of the assessment for county and parish expenses, the tax amounted to sixty pounds of tobacco a head. In 1678, when the public levy alone imposed on each taxpayer a burden of one hundred and ten pounds of that commodity for every tithable in his employment or possession, the total poll tax,—public, county, and parish,—rose in some counties to three hundred pounds a head, and in some to four hundred pounds, the greater proportion of which represented the county assessment.<sup>2</sup> In time, the amount of the county poll tax fell off, but as late as 1692, there was still occasional discontent expressed as to its onerousness; in the course of that year, George Bruce, of Rappahannock, submitted a petition to the Governor and Council at Jamestown, in which he complained of the abuse of the tax levy in that county; but when called on to prove his assertion in the presence of the justices, he seems to have made no attempt to do so.<sup>3</sup>

The following tables, based upon figures obtained from the surviving county records, are fairly representative of the whole Colony during the years designated:

TABLE I. TOTAL COUNTY AND PUBLIC LEVIES IN POUNDS OF TOBACCO

	Year	Total County	Total Public
Lower Norfolk.....	1656-65	158,600 lbs.	118,394 lbs.
	1666-83	188,809 "	82,276 "
	1684-91	136,140 "	48,895 "

<sup>1</sup> See Grievances of Stafford County, in Winder Papers, vol. ii.

<sup>2</sup> See Letter of Daniel Parke to Secretary Williamson, Jany. 3, 1678, British Colonial Papers, vol. xlii., No. 17, I.

<sup>3</sup> Rappahannock County Records, Orders May 4, 1692.



TABLE I. TOTAL COUNTY AND PUBLIC LEVIES IN POUNDS  
OF TOBACCO—*Continued*

	Year	Total County	Total Public
Henrico.....	1677-87 1692-96	186,573 lbs. 127,575 "	132,469 lbs. 32,206 "
York.....	1666-75 1677-86 1690-97	255,790 " 218,709 " 162,462 "	217,920 " 405,017 " .....
Lancaster.....	1653-62 1663-73 1674-83 1687-99	165,202 " 281,953 " 499,048 " 250,925 "	522,850 " 241,397 " 85,486 " 78,981 "
Essex.....	1692-99	224,632 "	49,568 "
Middlesex.....	1674-84 1685-99	318,815 " 374,627 "	142,252 " 141,163 "
Northumberland.....	1666-75 1677-93	316,224 " 575,432 "	166,393 " 480,788 "

TABLE II. AVERAGE COUNTY AND PUBLIC LEVIES

*Annual Average*

	Year	Average County Levy	Average Public Levy	Average per Poll
Lower Norfolk.....	1656-65 1666-83 1685-91	19,825 lbs. 26,872 " 19,460 "	14,737 lbs. 16,455 " 16,298 "	.. 64 26
Totals.....	1656-91	22,052 "	15,830 "	45
York.....	1666-75 1677-86 1690-97	28,421 " 27,338 " 23,209 "	31,131 " 81,003 " .....	34 61 20
Totals.....	1666-97	26,321 "	56,061 "	38
Lancaster.....	1653-62 1663-73 1674-83 1687-99	20,650 " 25,632 " 55,449 " 20,910 "	26,142 " 21,945 " 21,371 " 11,283 "	49 62 118 39
Totals.....	1653-99	30,660 "	20,185 "	67
Essex.....	1692-99	32,081 "	16,322 "	46

TABLE II. AVERAGE COUNTY AND PUBLIC LEVIES—*Continued*

	Year	Average County Levy	Average Public Levy	Average per Poll
Middlesex.....	1674-84 1685-99	39,850 lbs. 26,759 "	35,560 lbs. 20,165 "	97 48
Totals.....	1674-99	33,254 "	27,862 "	72
Northumberland.....	1666-75 1677-93	31,622 " 32,084 "	18,543 " 53,443 "	49 86
Totals.....	1666-93	31,853 "	35,993 "	67
Henrico.....	1677-87 1692-96	20,730 " 25,517 "	44,156 " 8,049 "	46 46
Totals.....	1677-96	23,127 "	26,102 "	46

TABLE III. TOTAL AVERAGE FOR COUNTY AND PUBLIC LEVIES

	Year	County Levy	Public Levy	Average per Poll
Lower Norfolk.....	1656-91	22,052 lbs.	15,830 lbs.	45
York.....	1666-97	26,321 "	56,061 "	38
Lancaster.....	1653-99	30,660 "	20,185 "	67
Essex.....	1692-99	32,081 "	16,322 "	46
Middlesex.....	1674-99	33,254 "	27,862 "	72
Northumberland.....	1666-93	31,853 "	35,993 "	67
Henrico.....	1677-96	23,127 "	26,102 "	46
Totals.....	1656-99	28,478 "	28,336 "	54

Estimating the value of tobacco, in the course of these forty years, at about two pennies a pound, the general rule, and it will be seen by an examination of Table III that, during that period, the average county levy amounted to £237, or, in purchasing power, to about 4500 dollars; the average public levy to £236, or, in purchasing power, to about 4475 dollars; and the average county and public poll tax taken together to

nine shillings or in purchasing power to about eight dollars. These estimates would be materially cut down if the average value of a pound of tobacco, during the same period, were reduced to a penny and a half.



## CHAPTER XXXVIII

### Taxation: Collection of Poll Tax

**H**OW was the poll tax collected? It would appear that, in the beginning, the collection of this tax was one of the most important duties performed by the sheriff of each county, a method in accord with English custom, which was always followed in Virginia unless the peculiar circumstances existing there made it inconvenient or repugnant to the public welfare to do so. For instance, in 1638, the sheriff of Lower Norfolk was instructed to collect the amount due from every tithable residing in that county<sup>1</sup>; and under the terms of an agreement between the sheriff and undersheriff of Accomac, drawn up in 1642, the latter bound himself to attend in person wherever the planters were required to deliver their respective shares, and also to be indefatigable in enforcing the payment of the total sum due from each.<sup>2</sup> Five years afterwards, it was found that many counties were so wide in area, and the claims upon the sheriffs' time and energies were so multitudinous, that these officers were unable to show the necessary promptness and thoroughness in collecting the taxes; and this fact so impaired the public credit that it was considered advisable to

<sup>1</sup> Lower Norfolk County Records, Orders Nov. 21, 1638.

<sup>2</sup> Accomac County Records, vol. 1642-5, p. 150.

relieve them of the burden, and to impose it on special commissioners, one of whom was to be appointed for every precinct situated in the Colony. The Act providing for this change conferred upon these commissioners the same power of distraining in case of delinquency as the sheriffs had possessed; and they, like the sheriffs, were also required to render an account to the justices of their respective counties.<sup>1</sup>

Before the close of 1648, the year following its adoption, this law was in full operation throughout the Colony. The court of Lower Norfolk, when the Act had been in force only a few months, issued an order that every collector should report to his fellow collectors the quantity of tobacco he had received.<sup>2</sup> Those appointed in this county, as well as in the others, consisted of some of the first men belonging to the community; in one year certainly (and, perhaps, it was the general custom at this time), the justices of the county court served in this capacity. This occurred in 1652, when the several collectorships were filled by Col. Cornelius Lloyd, Major Thomas Lambert, Thomas Bridge, John Sibsey, Lemuel Mason, and Francis Emperor.<sup>3</sup>

The sheriff of each county seems still to have, to some degree, participated in the collection of the taxes, and not simply received the tobacco from the hands of those who had performed that duty. In 1661, the incumbent of this office in Northampton is stated in the records to have visited Mrs. Alford's home, and marked one hogshead stored in her barn as belonging to the county; and subsequently visiting Mr. Littleton's, there marked

<sup>1</sup> Hening's *Statutes*, vol. i., p. 342; *ibid.*, vol. ii., p. 19.

<sup>2</sup> Lower Norfolk County Records, vol. 1646-51, p. 94.

<sup>3</sup> *Ibid.*, vol. 1651-56, p. 32.

three others in the same manner.<sup>1</sup> Some years after this incident occurred, an order of Accomac county court directed every citizen residing on the sea side, who was liable to pay taxes, to bring to certain designated places, in the form of tobacco, the full amount of his public dues. These places were to be chosen by the sheriff, who, in person or by deputy, was required to be present when the tobacco arrived. The taxpayers were to be allowed an important reduction in consideration of their carting it thither.<sup>2</sup>

That the duty of gathering in the taxes fell also on the sheriffs in 1671, was shown by an Act requiring them to submit full accounts of their collections to the county courts.<sup>3</sup> There is some evidence that, in 1670, it was optional with the county to nominate special collectors, or impose the whole task on the sheriff; in the course of that year, the collection of taxes in Middlesex seems to have been made altogether by the sheriff, whilst in Lower Norfolk, it seems to have been made exclusively by the several officers appointed for the purpose. One of the laws adopted by what was known as Bacon's Assembly, which convened in 1676, empowered each county court to appoint special collectors of the public dues.<sup>4</sup> Although so many of these laws were repealed after the suppression of the Insurrection, nevertheless this Act remained in force in some of the counties, a fact which aroused the strong opposition of no less a person than Herbert Jeffreys, at that time serving as the Governor of the Colony; he complained that some of the men appointed by him to the office of sheriff

<sup>1</sup> Northampton County Records, vol. 1657-64, folio p. 126.

<sup>2</sup> Accomac County Records, vol. 1666-70, p. 91.

<sup>3</sup> Hening's *Statutes*, vol. ii., p. 292.

<sup>4</sup> *Ibid.*, p. 358.



were deprived of the right to collect the taxes, one of great pecuniary importance to them, as they were entitled to ten per cent. of the tobacco delivered into their hands. Jeffreys was not content to make simply a general protest: he wrote letters pointedly rebuking those justices who insisted on maintaining in their counties a method so repugnant to the general custom.<sup>1</sup>

At the end of the century, the general rule seems still to have been for the sheriff to collect the taxes, not so much because this method was the most thorough and convenient, but because it afforded an increase of income to that officer.<sup>2</sup> Nevertheless, a few counties still exercised the right, originally granted by the Act of 1676, to appoint a commissioner for each precinct to gather in all public dues. This seems to have been the custom in Lancaster during the last decades; and it was not without significance that the commissioners

<sup>1</sup> The following is the text of Governor Jeffreys's letter relating to the subject:

"MIDDLE PLANTATION  
Ye 3rd November 1677

"GENTLEMEN,

"I am tould it hath been a custome in Virginia even to this day for the Sherriff to collect the public dues, and that the Lawes of this country, if they do not positively comand, doe at least tolerate and allow it. Notwithstanding, I am informed that some of yr committee doe endeavor to take it from Capt. Whitaker, who was by me appoynted High Sheriff of Yr County. And there having been no such precedent in former Governors' times, I cannot look upon it any otherwise than as an affront to me rather than a designed prejudice to him, and as I have not to my knowledge in any moment disoblged yr county, I desire you would please to lett the collection run in its proper channell, which will be kindly accepted by

"Yr assured friend and servant,

"HERB. JEFFREYS."

<sup>2</sup> The authors of the *Present State of Virginia*, 1697-8, declared in a general way that the "levy was collected by the sheriff from the several masters of families"; see section ix.

in this county were all members of the county court, who were thus seeking to add to their incomes the percentage allowed for making the collection.<sup>1</sup> It is quite probable that, whenever the sheriff did not serve in this capacity, the justices did, in order to obtain this benefit. If indifferent to the personal gain which might thus accrue to them, they quite certainly imposed the task on the sheriff.

There was one function in connection with the public taxes which was generally, although not always, performed by the sheriff: it was ordinarily his duty to deliver to each person mentioned in the levy the sum assessed in that person's favor; and he afterwards made up an account of his disbursements for submission to the justices of the county.<sup>2</sup>

<sup>1</sup> Lancaster County Records, Orders May 11, 1687.

<sup>2</sup> The following entry in the Henrico County Records, levy for Oct. 22, 1685, was by no means uncommon: "Sheriff to make payment of ye sums above specified to ye several persons on yr list named." The *Present State of Virginia, 1697-8* mentions that the "sheriff was obliged to pay away the tobacco to the persons to whom it was due." See section ix. When special commissioners collected the public dues, they also made the like payments. See Lower Norfolk County Records, vol. 1646-51, p. 94; also Lancaster County Records, vol. 1652-6, p. 302.

## CHAPTER XXXIX

### Taxation: The Quit-rent

**D**URING the Seventeenth century, only two kinds of direct taxes were levied for any great length of time: first, the poll tax, upon the characteristics of which I have already dwelt; and secondly, the quit-rent, a land tax payable to the King. The quit-rent was perhaps originally designed to show the supremacy of the royal title to the whole country, not as against aliens, but as against the inhabitants themselves. By the terms of the early charters, every estate in Virginia, small or great, owned by individuals, was to be held in "free and common soccage"; the only reservation was that one fifth of any metals discovered in its soil was to be the property of the sovereign. As soon as the Crown, in 1624, resumed administrative control of the Colony, the quit-rent was imposed, a rent fixed at one shilling for every fifty acres taken up under patent, and seated to the extent required by law. As the area of cultivated plantations spread out, the sum annually accruing from this tax steadily increased; in 1631, the General Assembly asserted that the quit-rents, if faithfully collected, would be equal in value to at least two thousand pounds sterling; as it was, even fifteen years later the amount actually gathered in did not exceed five hundred pounds sterling. At this time, the



quit-rents were used for the payment of the Treasurer's salary.<sup>1</sup>

The King, in 1671, bestowed the quit-rents on Colonel Henry Norwood, as some return for his fidelity to the royal cause in its darkest hours; and in 1673, on Arlington and Culpeper. The gift in either case carried with it all sums in arrears. As we have seen, the grant to the two noblemen was, in the end, revoked in consequence of the outcry raised by the Virginians. About 1679, Deputy-Governor Chichely submitted, through the Privy Council, a petition to the throne for the release of all quit-rents then unpaid, on the ground that they amounted now to so great a figure that, if a serious effort were made to collect them, it would fall with intolerable heaviness on every citizen, but especially on the members of the poorer classes.<sup>2</sup> That a large sum due on this account was still outstanding when Culpeper arrived in the Colony was shown by his command that the quit-rents should be collected during that year with the utmost strictness in order to throw a full light on the extent of the delinquency during previous years; but the result was disappointing, as the value of tobacco had now sunk to a low point, and the charges for collecting the rents were very onerous.<sup>3</sup>

That such a large amount of quit-rents was always in arrear was chiefly due to the fact that such a wide surface of land belonging to tracts taken up under patent, remained uncultivated. Of the five million acres embraced in estates held by private owners, it was estimated by Edward Randolph, towards the end

<sup>1</sup> Hening's *Statutes*, vol. i., p. 306.

<sup>2</sup> Colonial Entry Book, 1676-81, p. 361; for gift to Norwood, see Hening's *Statutes*, vol. ii., p. 517.

<sup>3</sup> British Colonial Papers, vol. xlvii., No. 105.

of the century, that only forty thousand had been more or less rescued from their original primæval condition. There were in the possession of members of the Council, in 1696, not less than one hundred thousand acres which had never paid one pound of tobacco as quit-rent. It was not strange that the planters should think that all unimproved soil should be relieved of this tax; and in the long run, they seem to have been successful in avoiding the full settlement of this branch of the public dues; it was stated in 1696 that no land in the Colony had ever been forfeited for the owner's failure to pay the quit-rents, although much ground had lapsed to the public from the neglect of the patentees to seat it according to the requirements of law.<sup>1</sup> In King and Queen county alone, during this year, it was supposed that there were at least thirty-eight thousand acres taken up from which no quit-rent had ever been received. Here, as elsewhere, no effort could be made by the officers of the Colony to collect the arrears because there was no personal property on the land to be distrained on, and the owners themselves resided in other counties.<sup>2</sup>

It would seem that the quit-rents were, from an early date, annually farmed out to members of the Council, including the Governor himself. In 1665, Berkeley took over those of James City and Surry counties; Colonel Miles Cary, those of Warwick and Elizabeth City; Colonel Thomas Stegge and Henry Randolph, those of Charles City and Henrico; General

<sup>1</sup> B. T. Va., 1696, vol. vi., p. 35.

<sup>2</sup> *Ibid.*, p. 23. Hartwell, in 1697, stated, in answer to the inquiries of the English Commissioners, that some of the planters of Virginia who owned 60,000 acres so overawed the sheriffs that the latter accepted these "men's accounts as they themselves would have it"; B. T. Va., 1697, vol. vi., p. 141.

Bennett, those of Nansemond and Lower Norfolk; Nathaniel Bacon, Sr., those of York, the south side of New Kent, and Isle of Wight; Peter Jennings and Matthew Kemp, those of Lancaster and Gloucester, and the north side of New Kent; Colonel Scarborough, those of Accomac and Northampton; and John Lee, those of Northumberland.<sup>1</sup> It will be perceived, from this list, that it was customary for the quit-rents of each small group of counties to be farmed out to the Councillor whose residence was situated in one of the groups. A change occurred in 1699, for, in the course of that year, the Council authorized William Byrd, the Auditor of Virginia, to sell the quit-rents of each county to anyone who would purchase them at the price of one penny a pound of tobacco, the commodity in which they were paid; and who also would remunerate the sheriff at the usual rate for collecting them.<sup>2</sup> Unless the quit-rents were farmed out, or sold outright, the tobacco used for their payment was delivered by the sheriff directly to the Auditor, who was empowered to retain seven and a half per cent. of his receipts as compensation for storing and selling the commodity. He afterwards transmitted a full account of these receipts to the Auditor-General of the Colonies residing in England.<sup>3</sup>

The following table shows the value of the quit-rents during a short series of years.<sup>4</sup>

<sup>1</sup> See Byrd Letter Book, fly leaf, Va. Hist. Society MSS. Coll.; see also *Va. Maga. of Hist. and Biog.*, vol. iii., p. 42.

<sup>2</sup> Minutes of Council, Oct. 19, 1699, B. T. Va., 1699.

<sup>3</sup> B. T. Va., 1697, vol. vi., p. 141. The sheriff in making his collections was guided by old rent rolls and his personal knowledge of new patents; see *Present State of Virginia, 1697-8*, section ix.

<sup>4</sup> These figures are taken from entries on a fly leaf of Colonel William Byrd's Letter Book, Va. Hist. Soc. MSS. Coll.



TABLE I. VALUE OF QUIT-RENTS COLLECTED 1663-65

	Years	Lbs. of Tobacco	Value in Money		
			£	s.	d.
James City and Surry.....	1663-5	26,107	130	11	0
Warwick & Elizabeth City.....	1663-5	14,305	71	11	2
Henrico & Charles City.....	1663-5	22,974	114	17	4
Nansemond.....	1663-5	19,714	98	11	4
Lower Norfolk.....	1663-5	20,462 <sup>1</sup>	50	5	2
York, Isle of Wight, So. Side New Kent.....	1663-5	33,438	167	3	8
Lancaster, Gloucester, No. Side New Kent.....	1663-5	38,673	193	7	3
Westmoreland & Stafford.....	1663-5	12,880	89	18	0
Accomac & Northampton.....	1663-5	32,487	162	8	7
Northumberland.....	1663-5	9,831	49	3	1
Rappahannock.....	1664-5	.....	38	18	0
Totals.....	1663-5	230,871	£1166	14	7

Exclusive of Rappahannock county, about two hundred and thirty-one thousand pounds of tobacco were, during this short interval, collected in the form of quit-rents; and this quantity of that commodity was valued at eleven hundred and sixty-six pounds sterling and fourteen shillings.

Towards the end of the century, the income from the quit-rents, on the average, ranged annually from one thousand to fifteen hundred pounds sterling.<sup>2</sup> Between 1684 and 1690, an interval of six years, the revenue derived from this source was estimated at £4375 13s. 9d.; but of this large sum, only £1985 14s. 10d. remained in the Colony's treasury in 1690, owing to the heavy outlay in the different branches of the public

<sup>1</sup> The valuation covered only one half of this total.

<sup>2</sup> B. T. Va., 1692, No. 116; Beverley's *History of Virginia*, p. 200 et seq. Henry Hartwell, in 1697, estimated the annual income from the quit-rents at £800; see B. T. Va., 1697, vol. vi., p. 147.

service. An additional charge imposed on the income from the quit-rents at this time was the annual payment of the sum of three hundred pounds sterling to the Lieut.-Governor.<sup>1</sup> Andros was, in 1691-2, instructed not to make any disbursements of these rents by his warrant without being thoroughly informed as to the surplus in hand, or as to the amount still due on this account.<sup>2</sup> Nor was the Governor at liberty to dispose of any part of this surplus for extraordinary objects without first finding out the pleasure of the King; for instance, in 1692, he had to request the royal sanction to the expenditure of one thousand pounds sterling belonging to this fund in meeting the cost of fortifying Virginia against a possible French and Indian attack, or of sending assistance to the neighboring Colonies in case of a like invasion.<sup>3</sup> This use of the quit-rents was thought to be justified by the words inserted, in 1684, in the repeal of the grant to Culpeper and Arlington: it was there expressly stated that these rents should be only employed for the "better support" of the Government of the Colony<sup>4</sup>; and in aiding the adjacent communities in a military emergency, it was considered that this was an indirect means of preventing an incursion into Virginia in the future.

<sup>1</sup> B. T. Va., 1692, No. 117.

<sup>2</sup> B. T. Va., Entry Book, vol. xxxvi., p. 137.

<sup>3</sup> B. T. Va., 1692, No. 96.

<sup>4</sup> See Repeal of the Culpeper Grant; also Colonial Entry Book, vol. cvi., p. 274. Culpeper retained his right to the quit-rents of the Northern Neck, which descended to the Fairfaxes by intermarriage with the Culpeper family.

## CHAPTER XL

### Taxation : Indirect Taxes

I HAVE mentioned incidentally the several varieties of indirect taxes which were imposed in Virginia during this early period. One of the most important of these was the duty on liquors. This tax does not seem to have been created as a permanency until rather late in the course of the century. Berkeley declared, in 1671, that no import duties were then in operation in Virginia<sup>1</sup>; and apparently it was not until the example was set by the English Parliament that all liquors brought into the Colony were, systematically, made liable to such a charge. About 1683, the Commissioners of Trade and Plantations, recommending the inauguration of this tax as a means of raising money upon urgent occasions, asserted that it would be found to be more equal and acceptable than the prevailing poll tax. The suggestion bore quick fruit, for, in the following year, the General Assembly laid a duty of three pence a gallon on all the wine, brandy, and rum imported into the Colony; and permission was granted to pay this duty in kind.<sup>2</sup> In creating the impost, this

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 516. A tax on rum was imposed about 1663, but the law, after being in force about a year, was repealed; see Hening's *Statutes*, vol. ii., p. 128.

<sup>2</sup> Colonial Entry Book, 1680-95, p. 208; Hening's *Statutes*, vol. iii., p. 23.



body stated that its object was to lessen the burden of the poll tax; and also to accumulate a fund to be expended in building a State-House to accommodate the sittings of the General Court and of the General Assembly also. The master of every ship was required, before he broke bulk, to report the quantity of liquors he had on board; and should he disregard this regulation, he was to be liable to the forfeiture of his vessel, her guns, tackle, and furniture; but an exception was made in favor of those persons whose ships had been constructed entirely in Virginia. These alone were to be exempted from the operation of the tax.<sup>1</sup>

The import duty on liquors was renewed in 1691 for the exclusive purpose of diminishing the burden of the poll tax. It was now again provided that no tax was to be laid on liquors brought in in a vessel built in Virginia; and if the vessel had been constructed elsewhere, but was owned by citizens of the Colony, the duty per gallon was not to exceed two pennies.<sup>2</sup> This law was re-enacted in 1695 and 1699. During this time also, a tax of one penny a gallon seems to have been placed on beer and cider, which apparently were not included in the original list. It was estimated that from this general source of revenue not less than six hundred pounds sterling were annually obtained.<sup>3</sup>

In the account given of the administration of the Colony's military affairs, reference was made to the tax in the form of shot and powder paid by every incoming ship for the purpose of keeping the fort at Point Comfort supplied with ammunition. At the close of the century, every vessel reaching port in Virginia was

<sup>1</sup> Hening's *Statutes*, vol. iii., p. 23.

<sup>2</sup> *Ibid.*, pp. 88, 132.

<sup>3</sup> Beverley's *History of Virginia*, p. 200.

required to pay a tonnage duty of fifteen pennies.<sup>1</sup> A similar tax, amounting, in 1633, to sixty-three pounds of tobacco per poll, was imposed on every person planting tobacco during the first year following his arrival<sup>2</sup>; but this regulation was soon repealed, no doubt because it was found to discourage new settlers, who were absolutely dependent upon the production of that commodity for a livelihood. In 1679-80, a duty of six pennies had to be paid by the owner of every servant or slave imported.<sup>3</sup> Many years later, when it became necessary to raise a fund for rebuilding the capitol, which had been destroyed by fire, a duty of twenty shillings was laid on every slave brought in; and of fifteen on every white servant, provided that he or she had not come from England. The operation of this tax was designed to be only temporary, as it was in principle repugnant to the public welfare, in consequence of the fact that the Colony was so dependent for its cultivation upon these two classes of agricultural laborers. The amount of income derived from this source fluctuated because the supply of new servants and slaves reaching Virginia from year to year was very irregular and unequal.<sup>4</sup>

A tax was, in 1691, laid on all skins and furs, as well as on all wool and iron, exported from Virginia; the

<sup>1</sup> *Present State of Virginia*, 1697-8, section ix.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 222.

<sup>3</sup> Acts of Assembly, 1679-80, Colonial Entry Book; Hening's *Statutes*, vol. ii., p. 468. In his Answers to the English Commissioner's Inquiries in 1671, Berkeley stated that a considerable income was, at that time, derived from the import tax on slaves. It would appear from this that a similar law had been adopted at an earlier date than 1679; if so, the Act has not, so far as we are aware, been preserved.

<sup>4</sup> Hening's *Statutes*, vol. iii., p. 192; Beverley's *History of Virginia*, p. 200.

principal object of which regulation was to procure funds for the support of the projected College. It had, however, been the Colony's settled policy for some time, to prohibit the exportation of such articles as these because it was the only way of keeping in the people's hands sufficient materials for the manufacture of shoes, clothing, and iron work of different sorts. The rate adopted for skins varied with the kind and condition; for instance, for raw hides, it was one shilling, and for dressed, two; and for buck skin and doe skin, eight and five pence respectively. The duty imposed on each pound of wool exported was sixpence, and on each pound of iron, one penny.<sup>1</sup> Beverley estimated the amount of income derived from these sources annually at one hundred pounds sterling.<sup>2</sup>

The most profitable of all the indirect taxes was the duty of two shillings imposed on every hogshead exported from the Colony. The Act creating this tax was first passed in 1657; and there were three anticipations leading to its adoption:—first, that it would afford a certain and steady income for the support of the local government; secondly, that it would assure the introduction of coin into Virginia, since the duty would be paid by shipmasters just arrived from England, who were confidently expected to bring over, for that purpose, a quantity of gold and silver; and thirdly, that it would encourage a diversification of crops as a means of lessening the tax.<sup>3</sup>

It shows how extraordinary was the change of

<sup>1</sup> Hening's *Statutes*, vol. iii., p. 63.

<sup>2</sup> See Beverley's *History of Virginia*, p. 200 *et seq.*

<sup>3</sup> Hening's *Statutes*, vol. i., p. 410. When tobacco was shipped in a loose form, there was a tax of two shillings imposed on every five hundred pounds; see Act of 1677, Hening's *Statutes*, vol. ii., p. 413.



opinion reflected in this memorable Act that, only a few years before, a law had been adopted by the General Assembly, in which it was declared that it would be very unwise to lay any duty, however small, on exported tobacco<sup>1</sup>; a statement that was entirely sound from an economic point of view. In March, 1657-8, it was decided to reduce the new tax to one shilling a hogshead; and the proceeds were to be used in paying the salary of the Governor, whose remuneration could no longer be derived from the English customs on tobacco; this arrangement, however, was subject to the reservation that only during the time this official was elected by the House of Burgesses, he was to have any claim on this new source of income.<sup>2</sup>

Two years afterwards, the export duty on tobacco was increased to ten shillings in the case of every hogshead consigned to any of the English dominions outside of Europe. This new regulation was really directed against the merchant marine of the Dutch, from whom the English were now striving to wrest the commercial supremacy of the age.<sup>3</sup> About 1661-2, the original Act imposing two shillings on each hogshead exported was renewed. The tax of ten shillings, when the hogshead was not to be conveyed to the English possessions in Europe, was still, as a rule, enforced.<sup>4</sup> Should, however, the vessel containing a cargo destined for some one of the other Colonies belong

<sup>1</sup> Hening's *Statutes*, vol. i., p. 413.

<sup>2</sup> *Va. Maga. of Hist. and Biog.*, vol. viii., p. 392.

<sup>3</sup> Hening's *Statutes*, vol. i., p. 536. These ten shillings may have been in addition to the ordinary tax and not simply inclusive of it. This law was repealed in 1665, on the ground that its chief effect was to increase the exportation of tobacco from Maryland; see Hening's *Statutes*, vol. ii., p. 218.

<sup>4</sup> *Ibid.* pp. 130, 134.

entirely to citizens of Virginia, it was to be exempted from the scope of this onerous duty<sup>1</sup>; and the same privilege was granted when a ship, similarly owned, was about to set out for English ports. The exemption from the tax of two shillings did not apply when the vessel had been constructed in Virginia, but belonged to Englishmen.<sup>2</sup>

It was the design of those who framed the Act imposing the tax of two shillings that the burden thus created should fall on the owner of the exporting vessel, generally a merchant residing in England, and that the amount due should not be really handed over until the tobacco had reached an English port; and this seemed to be assured by requiring simply a bond of the shipmaster to pay when passing his cargo through the English custom-house.<sup>3</sup> The Council of Foreign Plantations, however, very soon expressed their disapproval of this plan; in an address to the King, in the course of 1662, they sought permission to enforce the payment of the tax in Virginia, either in actual coin or in goods of the necessary value; and they also requested authority to confiscate all tobacco transported over sea without the master being able to show in England a cocquet proving that the tax had been met before his departure from

<sup>1</sup> Hening's *Statutes*, vol. ii., p. 134.

<sup>2</sup> It was so decided in 1686; see Colonial Entry Book, 1680-95, p. 227.

<sup>3</sup> Petition of Owners of Ships trading with Virginia in 1662, contains the following: "Whereas the Governor and planters there doe of themselves, without any power given them by his Majesty, compell ye petitioners, upon the arrival of any ship there, and before they can break bulk to unload any goods, for to enter into bond of £2000, with sureties to pay in London to whom they shall appoint, 2 shillings sterling money for every hogshead of tobacco they shall laid aboard their said ship"; British Colonial Papers, vol. xvi., No. 93.

Virginia. It seems to have been allowable, however, to pay the duty with bills of exchange on London.<sup>1</sup>

Fitzhugh estimated that, in one year alone, the revenues derived from the tax of two shillings per hogshead amounted, clear of all expenses, to nearly four thousand pounds sterling. Of this sum, about twelve hundred pounds was paid to the Governor in discharge of his salary; one hundred to the Auditor-General of the Colonies residing in England; three hundred to the Auditor in Virginia; and thirty or forty to each member of the Council. The remainder was remitted to the royal treasury in London.<sup>2</sup> Sometimes, this surplus was, with the King's consent, spent in carrying out certain public purposes in America; for instance, in 1693, one hundred pounds were dispatched to New York to assist that government in its preparations to repel an expected invasion by the French and Indians. And in some years, considerable sums, drawn from the same fund, were, no doubt, devoted to repairing the fortifications situated in the Colony.<sup>3</sup> The income from this source was in the end somewhat diminished by the Act providing for an increase in the size of the hogshead.<sup>4</sup>

<sup>1</sup> Proceedings of Council of Foreign Plantations, Aug. 25, 1662, British Colonial Papers, vol. xiv. A petition of Bristol merchants trading in Virginia stated that, in 1665, they had "paid a tax of 2 shillings, 3 pence per hogshead imposed by the Governor of Virginia, for which they had given bills of exchange amounting to near £400"; British Colonial Papers, vol. xix., No. 12. In 1670, express permission was granted to pay in this form; see Hening's *Statutes*, vol. ii., p. 283.

<sup>2</sup> Letters of William Fitzhugh, April 5, 1687. In 1671, the number of hogsheads exported were estimated by Berkeley at fifteen thousand, which, during that year, assured from this tax a revenue of about £3000.

<sup>3</sup> Letter of Andros, January 5, 1693, B. T. Va., Entry Book, vol. xxxvi., p. 253.

<sup>4</sup> See *Present State of Virginia*, 1697-8, section ix.



In addition to the tax of two shillings, a tax of one penny a pound was placed on every hogshead exported from Virginia to any one of the English Colonies. This tax, which seems to have been really created by Act of Parliament, was intended as a substitute for the duty of ten shillings adopted about 1660 by the General Assembly of Virginia. It was in force in 1674; and in the course of that year, Giles Brent was nominated to the office of collector of the proceeds by the English Commissioners of Customs.<sup>1</sup> The income derived from it in Virginia was never very considerable, although it was estimated that not less than forty shillings, by the operation of this duty alone, had to be paid on every hogshead shipped to New England, or any other of the English Colonies in America. The deductions for special charges against the amount raised were particularly heavy:—for instance, the collector's fee was fixed at fifty per cent. and the comptroller's, who revised the audits, at twenty-five per cent. of the sums paid in. The whole fund obtained annually from this source was not supposed to exceed one hundred pounds sterling, so small was the number of hogsheads conveyed from Virginia to ports outside of England.<sup>2</sup> The collections in Maryland added one hundred pounds to this amount.<sup>3</sup>

Near the close of the century, it was calculated that the government of the Colony, independently of the

<sup>1</sup> Randolph MS., vol. iii., p. 331. In 1699, there seems to have been still a separate collector for the one penny duty; see Memorial of Richard Lee, *et al.*, B. T. Va., vol. vii., p. 150.

<sup>2</sup> *Present State of Virginia, 1697-8*, section ix. The fourth quarter of the fund was supposed to be payable to the King, but from year to year, it was practically eaten up by the charges for the boats, men, and horses needed in collecting it; see Memorial about the College, Dec. 11, 1691, B. T. Va., 1691, No. 71.

<sup>3</sup> Beverley's *History of Virginia*, p. 200 *et seq.*

poll tax, derived annually from all sources for its support about three thousand pounds sterling.<sup>1</sup> This income, to recapitulate, was obtained from the following imposts:—the tax of two shillings on each hogshead of tobacco exported; the tonnage tax of fifteen pennies paid by every ship arriving in Virginia; the head tax of six pennies paid by or for every passenger, bond or free, entering the Colony with the determination to remain; all fines and forfeitures arising under the operation of Acts of Assembly; all waifs and estrays; all compositions for escheated plantations or chattels; and finally, the proceeds from the sale of public lands when it became permissible to purchase them with coin or tobacco.

<sup>1</sup> Beverley's *History of Virginia*, p. 200 *et seq.* This was also the estimate given by the authors of the *Present State of Virginia*, 1697–8. In 1673, Berkeley stated that the revenue of the Colony approximated £2200; see British Colonial Papers, vol. xxx., No. 51, I. See also British Colonial Papers, vol. xxxvii., Doct. 19.

## CHAPTER XLI

### Taxation : Collectors and Naval Officers

IN 1624, the annual revenue derived by the royal treasury from the customs paid on the tobacco imported into England from the Colony closely approximated ninety-one thousand pounds sterling.<sup>1</sup> Fifty years later, the income accruing from the same source amounted to one hundred thousand pounds yearly,<sup>2</sup> a sum which, in purchasing power, was equal to at least two millions of dollars in our modern currency. These figures throw a vivid light on the value of the tobacco from Virginia passing through the English custom-houses in the course of every twelve months; and a light not less vivid on the mere quantity shipped from the wharves of the plantations. The first suggestion that an export duty should be placed on all this commodity leaving Virginia,—a measure which would make

<sup>1</sup> British Colonial Papers, vol. iii., No. 23. The actual figures were £90,350.

<sup>2</sup> Colonial Entry Book, 1675-81, p. 34. A large portion of this revenue for 1674 was derived from the customs on the tobacco imported from Maryland,—not the case, of course, in 1624, as the latter province had not then been founded. In 1624, tobacco commanded in the English market a far higher price than in 1674, and the duty was, no doubt, proportionately much higher also. This explains the practical equality between the customs income from this source in 1624 and 1674, although the importation of tobacco into England was far greater in bulk in the latter year than in the former, owing to the enormous increase in the production.



the appointment of new revenue officers necessary,— seems to have come from Richard Kemp; in a letter dated 1636, he declared that, if a custom-house were established in the Colony for this purpose, it would quicken the Colony's trade, and greatly promote ship-building among the inhabitants. Kemp's proposal does not appear to have involved the idea of placing on the exported tobacco a tax additional to the English customs, but rather that the English customs should be collected in Virginia before the tobacco was taken away. The advantages to be gained by this were represented by him to be, first, the prevention of all kinds of embezzlement, estimated by him to amount annually to one third of the whole quantity dispatched; secondly, the avoidance of all losses which might result from shipwreck, since the owner of the tobacco would, under the plan suggested, have to pay the duties before he would be permitted to carry his cargo off. Kemp asserted that convenient custom-houses could be secured simply by reviving an old law requiring the erection of three storehouses at different points in the Colony for the accommodation of the planters' crops before being carried on board ship for transportation to England.<sup>1</sup>

Kemp's proposal was in the main rejected by the English authorities as soon as it was submitted to them, for, not incorrectly, they deemed it more prudent that the customs on tobacco should be collected after its arrival in England rather than before its departure from Virginia. They were, however, strongly disposed to take the proposal into favorable consideration so far as it involved the idea of appointing an inspector for the whole of this commodity exported from the Colony. The

<sup>1</sup> British Colonial Papers, vol. ix., No. 9.

General Assembly appears to have already impowered the Governor and Council to nominate such an officer, to be known as Register, and who was to receive as his remuneration a fee of twopence for every hogshead shipped from the Colony's wharves; these fees were to be paid him by the masters of vessels when, just before sailing, they brought their invoices to him for examination. The Register proved to be an officer of small importance; the first person to fill the position under the English Government's appointment was Jerome Hawley, the Treasurer of Virginia; and he was succeeded by Richard Kemp.<sup>1</sup> Apparently, the chief duty of these men during their incumbency was to inform the English Commissioners of Customs of the number of hogsheads exported from Virginia in any one year, so as to enable them to discover the more certainly the extent to which tobacco was smuggled into the ports of England; and also the extent to which it was shipped to foreign countries directly after leaving the Colony.

As soon as the export duty of two shillings a hogshead was created, it became necessary to appoint a sufficient number of officers to collect it. In 1659, two years after the Act was first passed, the Governor was impowered to make these nominations.<sup>2</sup> Each collector, however, had to be accepted and endowed with the authority to act by the English Government, especially after he came, by the operation of the Navigation laws, to receive funds belonging to the English Treasury. The commission granted to Christopher

<sup>1</sup> British Colonial Papers, vol ix., Nos. 40, 110; vol. x., Nos. 5, 60, I. Kemp had already occupied the position by the appointment of the General Assembly.

<sup>2</sup> Hening's *Statutes*, vol. i., p. 549.

Wormeley in 1699 was entirely in harmony with those received by his associates, all of whom, like himself, had first been named by the Governor.<sup>1</sup> Such was the case with John Lear and Major Charles Scarborough, who, in 1692, were appointed by Nicholson collectors of the duty of two shillings a hogshead, as well as of the duty of one penny a pound on the tobacco shipped, not to England, but to some other of the English Colonies. These officers were empowered to make collections in the interval preceding the arrival of their commissions.<sup>2</sup> In one instance, at least, that of Peter Heyman, the collector for the Lower James River at the end of the century, the nomination had been made by the English Commissioners of Customs entirely on their own initiative. He was not a member of the Virginian Council either before, or apparently even after his appointment; which he seems to have secured by the influence of his family in England, where he himself was residing when chosen to the place.<sup>3</sup>

Every collector was authorized to appoint a deputy to serve temporarily or permanently in his stead. At a meeting of the Council held in 1692, Christopher Wormeley was permitted to name such a deputy to represent him in Stafford county, and Edward Hill also one to represent him in a part of the district of Upper James; whilst the like privilege was, on the same occasion, granted to Col. John Lear to name a deputy at Kikotan. The reason given for allowing the

<sup>1</sup> See his commission as printed in Calendar of Va. State Papers, vol. i., p. 51.

<sup>2</sup> Minutes of Council, April 29, 1692, Colonial Entry Book, 1680-95.

<sup>3</sup> Minutes of Council, June 8, 1699, B. T. Va., vol. liii. In 1699, the Councillors were not permitted to hold the collectorships.



collectors assistants in the performance of their duties was that it was often the only way to prevent fraudulent irregularities on the part of shipmasters.<sup>1</sup>

The chief duties of the collector, in his relation to the English Government, were, first, to put into execution all Parliamentary measures regulating the plantation trade; second, to carry out the instructions given him from time to time by the Commissioners of the English customs; third, to enforce all the provisions respecting ships and crews embodied in the Navigation Acts, and to report all violations and seizures under these laws; fourth, to see that the arrival of every sea-going vessel was reported to him, and that her cargo remained undischarged until he had secured full information as to its character, and also as to the port from which the vessel had come, whether from England, or an English Colony,—in which last circumstance, should the merchandise on board be of English manufacture, a cocquet was to be exhibited showing the payment of the duties in that Colony; fifth, to obtain a certificate from every captain leaving for Europe that he had given bond in England, that he would land his cargo there; sixth, to grant a certificate to every such captain declaring that he was taking his commodities out of

<sup>1</sup> B. T. Va., 1692, No. 123. Christopher Wormeley, according to Edward Randolph, resided fifty miles away from the scene of his duties as collector. He had appointed Col. Griffin his deputy. "Griffin lives by the water side," so Randolph stated, "and enters into a book the names of the masters and ships, and keeps an account of ye fees of ye office for entry bonds, certificates, etc. Col. Wormeley goes once or twice a year to receive his share of the fees, but whence ye vessel comes, ye number and quality of ye men, not a word." Randolph had come out from England in order to make a report on the manner in which the revenue due the English Government in the Colonies was collected; B. T. Va., 1692, No. 110.

Virginia in a legal way; seventh, to collect all duties payable on imported or exported goods of various kinds; and, finally, to send such information as to each ship sailing for England with a cargo of tobacco as would enable the Commissioners of Customs to discover, after the cargo's arrival, whether any fraud had been committed.

In addition to these duties, each collector was annually required to transmit to the Commissioners a statement as to the agricultural commodities produced in his district, and also as to all the articles manufactured there; and this report was to be accompanied by a second statement as to the number of vessels belonging to the inhabitants, and where and by whom they had been constructed. One object of this inquiry was to prevent the collectors from sharing in the ownership of a trading ship, as this was supposed to be conducive to fraud in the performance of their duties.<sup>1</sup>

The chief duty of a collector in relation to the Government in Virginia was to receive the sums accruing from the tax of two shillings imposed on every exported hogshead. These sums he delivered to the Auditor of the Colony after swearing to their correctness before the Governor.<sup>2</sup>

<sup>1</sup> British Colonial Papers, vol. lix., No. 34; Colonial Entry Book, 1680-95, p. 156. It was stated, in 1699, by the Commissioners of Customs that, in comparing the yearly entries at the custom-houses in England with the account of the annual proceeds from the tax of two shillings per hogshead, and from other duties in Virginia, there was revealed, in the different discrepancies, evidence of great frauds on the shipmasters' part, and of delinquencies on the part of the collectors themselves, arising either from neglect or complicity. Nicholson was ordered to appoint no one collector who was largely engaged in trade.

<sup>2</sup> *Present State of Virginia, 1697-8*, section ix. The collector, as an officer of the Colony, was often described as "Receiver of the

The remuneration of the collectors was not inconsiderable:—they received a fee of fifteen shillings for every vessel of twenty tons, or under, arriving in the waters of their respective districts, and of thirty shillings for every vessel of more than twenty tons; but if the ship had been built in Virginia, the fee was, in both cases, limited to ten shillings and sixpence. They were also authorized to charge two shillings and sixpence for every license to trade issued to a sea captain, and the like amount for every bond given by him on the same occasion. Finally, it was estimated that the collectors were, as the legal reward for their services, entitled to not less than twenty per cent. of the entire amount of the customs paid to them in their official capacity.<sup>1</sup>

The duties of the naval officer were so involved with the collector's that the two sets were hardly distinguishable from each other. During many years, the two positions were held by the same man without any apparent detriment to the public interests. The right to bestow the office belonged to the Governor; but, like the nominations to the collectorships, his appointment to it was, no doubt, subject to the approval of the English Commissioners of Customs.<sup>2</sup>

The naval officer was required to keep a strict account

Two shillings per hogshead and the Virginia Duties." The examination of his accounts by the Governor and Council was stated by Hartwell to have been always perfunctory. See also B. T. Va., 1697, vol. vi., No. 147; Hening's *Statutes*, vol. iii., p. 195.

<sup>1</sup> Beverley's *History of Virginia*, pp. 197–8; B. T. Va., 1697, vol. vi., No. 147. The fees for entering and clearing vessels, licensing to trade, etc., were reduced by Act of 1699; see Hening's *Statutes*, vol. iii., p. 195.

<sup>2</sup> See Hartwell's Testimony, B. T. Va., 1697, vol. vi., p. 146; also Nicholson's Letter dated June 10, B. T. Va., vol. viii.



of all the commodities brought into the Colony or carried out of it; and also to make an accurate note of the names of all ships arriving and departing, their tonnage, the number of their guns, the ports from which they last hailed, and those to which they designed sailing on their next voyage. All this information was to be reported by him once every quarter, or four times a year, to the Commissioners of Trade and Plantations.<sup>1</sup> This officer also had the custody of the different certificates and bonds required, under the Acts of Navigation, of all shipmasters, whilst the cocquets and other warrants for merchandize were left in the collector's custody.<sup>2</sup> In 1698, a Councillor having been forbidden to hold either of these two offices, Nicholson named a different person to fill each, on the ground that this would subserve the merchants' convenience, and advance the prosperity of the Colony's trade.<sup>3</sup> And this regulation was in force during the remainder of the century.<sup>4</sup> The naval officer, by way of remuneration for his services, was entitled to appropriate ten per cent. of the quantity of tobacco received by him; and was allowed to claim certain special fees in addition.<sup>5</sup>

<sup>1</sup> See Letter of Lord Sunderland, Colonial Entry Book, 1676-81, p. 403.

<sup>2</sup> Instructions to Collectors, 1686-7, British Colonial Papers, vol. lix., No. 34.

<sup>3</sup> B. T. Va., 1699, vol. vii.

<sup>4</sup> Hening's *Statutes*, vol. iii., p. 195; B. T. Va., vol. vii., p. 126; Minutes of Council, June 8, 1699, B. T. Va., vol. liii.

<sup>5</sup> Beverley's *History of Virginia*, pp. 197-8; Hening's *Statutes*, vol. iii., p. 195.

## CHAPTER XLII

### Taxation: Auditor and Treasurer

THERE were two auditors to pass on the annual returns from the Colony's indirect taxes during the Seventeenth century:—first, the Auditor-General, who resided in England, and was the final examiner of the accounts of all the American revenues coming to the King; and secondly, the Auditor whose home was situated in Virginia. The first to hold the position in England was William Blaithwayt, who was appointed about 1680, and who received a salary of an hundred pounds sterling.<sup>1</sup> But the office of "Auditor and Receiver for Virginia Duties" had already been created in the Colony; as early as 1654, Thomas Stegge was occupying it; and the incumbent's chief duty at that time was to compel the sheriffs and the other collectors of the revenue belonging to the King to render accounts of their receipts and disbursements. These accounts were always submitted at Jamestown; generally in March; at which date both the General Court and the General Assembly were sitting.<sup>2</sup> Stegge was

<sup>1</sup> B. T. Va., 1699, vol. vii., pp. 41, 47. This was the amount paid by Virginia; it is probable that he received additional sums from the other colonies.

<sup>2</sup> See Stegge's Proclamation in Surry County Records, vol. 1645-72, p. 286, Va. St. Libr. The duties of Auditor were at first performed by the Treasurer of the Colony.

succeeded in 1670 by John Lightfoot, whose commission, however, was suspended the following year because Edward Digges had been promised the office as a reward for his persistent efforts to advance silk culture in Virginia.<sup>1</sup> About seven years later, Robert Ayleway was appointed to the Auditorship for life<sup>2</sup>; at this time, the elder Nathaniel Bacon was performing its duties; and it became necessary for him now either to retire, or to enter into an agreement with Ayleway for a division of the fees. The latter, having become Clerk of the Ordnance in Ireland, was not unwilling to arrange matters; and this having been done, Bacon remained in enjoyment of the office until 1687, by which year his physical infirmities had so grown on him that he was compelled to resign it. The elder William Byrd succeeded him by authority of a commission granted by James II; but Ayleway still retained his interest in the office; and it was not until Byrd purchased this interest outright that he obtained an exclusive hold on the position, which continued in his possession until his death.<sup>3</sup>

In a general way, the duty of the Auditor was to examine the accounts of the collectors of the public revenues, whether belonging to the King or to the Colony. These revenues consisted of the following:—the quit-rents; the duty of two shillings imposed on every hogshead exported; the tonnage duty of fifteen pence

<sup>1</sup> British Colonial Papers, vol. xxx., No. 37; vol. xli., No. 144; *William and Mary College Quart.*, vol. ii., 204; Dom. Entry Book, Charles II., vol. xxxi., p. 77.

<sup>2</sup> *Ibid.*, vol. xlii., No. 9.

<sup>3</sup> Minutes of Council, June 20, 1688, June 25, July 11, 1689, B. T. Va., Entry Book, vol. xxxvi., pp. 5, 8. See also Preface, p. xxv., to Bassett's edition of the younger Byrd's Works; Letters of William Byrd, Aug. 8, 1690.



payable by every ship arriving in the waters of Virginia; the duty of one penny a pound placed on all tobacco transported to any English Colony in America; fines and forfeitures of different kinds; and, finally, all other customs of whatever nature which the General Assembly might from time to time decide to establish, whether designed to be permanent or merely temporary.<sup>1</sup>

Having made out his own account, after passing on the account of each collector of the various duties and customs, the Auditor laid it before the Governor and members of the Council. This seems to have been done regularly once in the course of every twelve months.<sup>2</sup> Having obtained their approval (which appears, as a rule, to have been a nominal proceeding), he transmitted the account to the Auditor-General in England. It was not infrequently accompanied, at the request of the Governor and Council, by a statement showing, with great particularity, the amounts already disbursed for the support of the local government; and the object of this seems to have been to influence the King to be conservative in ordering an appropriation of the surplus, as there might be further need of drawing on the same fund for the Colony's uses.<sup>3</sup>

Previous to Culpeper's administration, the Auditor was required to submit his account to an examination

<sup>1</sup> Culpeper's Report, 1681, Campbell's *History of Virginia*, p. 353; Beverley's *History of Virginia*, p. 196.

<sup>2</sup> In 1699, the accounts were ordered to be settled once every three months; see Minutes of Council, May 4, 1699, B. T. Va., vol. liii.

<sup>3</sup> Minutes of Council, June 22, 1699, B. T. Va., vol. liii. During some years, there was a deficit. In 1697, Byrd advanced £2955 to cover shortages for the years 1696 and 1697, brought about by extraordinary drafts upon the revenue. For this, he was, in 1698, reimbursed by a warrant on the balance remaining in the treasury at that time; *Calendar of Va. State Papers*, vol. i., p. 61.

by the House of Burgesses before he transmitted it to England; this gave that body an accurate idea of the amount of the revenues reaching his hands; and also as to how these revenues had been expended. Culpeper seems to have been successful in breaking up this custom; but for many years afterwards, the opinion was repeatedly expressed by leading citizens that it should be restored.<sup>1</sup>

Writing in 1699, Nicholson urged that the offices of Auditor and Receiver of Virginia Duties<sup>2</sup> should not be held by the same man, as was usual at that time. One result of the prevailing rule was that the Auditor passed upon the accounts of money which he himself had paid out as Receiver, and in consequence, there was no real check upon careless or fraudulent conduct on his part in performing the respective duties of the two positions. Nicholson also complained of the fact that the Auditor was not required to reside permanently at the seat of government; or at least live there for a stated period during every year. All the accounts of the office at this time were kept at Byrd's dwelling house, where, as was pointed out, they were in more danger of destruction by fire than they would have been had they been kept in a public building at Jamestown; moreover, so long as these accounts remained in the Auditor's own home, they were, at his death, liable to pass to his executors as a part of his estate. A certain amount of tobacco belonging to the Government was sure to be at the same place, and in settling the deceased's

<sup>1</sup> See letter of Thomas Ludwell written in 1688, Colonial Entry Book, 1685-90, p. 276.

<sup>2</sup> "Receiver of the Virginia Duties," was his official title. These duties consisted chiefly of the export tax on furs and skins and the import tax on liquors, servants, and slaves; see oath, *Va. Maga. of Hist. and Biog.*, vol. xi., p. 162.

affairs, this revenue would become confused with his private property; and only after great delay could it be separated and delivered to the public authorities.<sup>1</sup>

During the London Company's existence, the head of that great body was known as the Treasurer, a designation attributable to the fact that, as the legal custodian of the corporate revenues, he was, at the end of each year, required to submit a statement as to his different receipts and disbursements during the previous twelve months; and also as to the amount of funds still remaining in his hands.<sup>2</sup> In 1619, the first Assembly to convene in the Colony requested the Company to appoint a sub-treasurer, and to order him to reside permanently in Virginia as the only way of making it convenient to the planters to pay their quit-rents.<sup>3</sup> In compliance with this petition, George Sandys, one of the most accomplished men of that age, was nominated; and, in 1621, in the train of Wyatt, he arrived at Jamestown, and at once entered upon the performance of the duties of the office,<sup>4</sup>—duties which, at this early day, consisted, not only in accounting to the Company in England for all quit-rents and other revenues annually accruing, but also in carrying out that body's directions for promoting the cultivation of what were described as the "staple commodities." Sandys received a grant of one hundred and fifty pounds sterling to meet the expense of transporting himself and the other members of his family to the Colony; his office was permanently endowed with fifteen hundred acres; and

<sup>1</sup> Nicholson's Letter, July, 1699, B. T. Va., 1699, vol. vii.

<sup>2</sup> Orders and Constitutions, 1619, 1620, Force's *Hist. Tracts*, vol. iii.

<sup>3</sup> Minutes of Assembly, p. 16, Colonial Records of Virginia, State Senate Doct., Extra, 1874.

<sup>4</sup> Randolph MS., vol. iii., p. 161; Campbell's *History of Virginia*, p. 151.



fifty experienced tenants were sent over to make this large and valuable estate immediately profitable.<sup>1</sup>

Jerome Hawley, a brother of Gabriel Hawley, the Surveyor-General of Virginia, was, in 1637-8, appointed to the office of Treasurer. He seems to have been the first person nominated to the position after the Company's dissolution, an event that had taken place some twelve years before.<sup>2</sup> Like his predecessor, Sandys, he was sent to Virginia primarily to ensure a more careful and thorough collection of the quit-rents, for which certain important provisions were now adopted; but in addition, he was to serve as custodian of all funds accruing from the fines or forfeitures imposed by any court in the Colony. His annual account of the moneys obtained from these sources was to be submitted to the Governor and Council; and their approval having been obtained, the report was then to be forwarded to England.<sup>3</sup>

Roger Wingate was, in 1640, acting as the Treasurer of the Colony. A few years afterwards, when the basis of taxation was extended to land, horses, cattle, and other livestock, this officer was ordered by the General Assembly to "make out a detailed report as to the whole amount of real and personal property to be found

<sup>1</sup> Abstracts of Proceedings of Va. Co. of London, vol. i., p. 119.

<sup>2</sup> British Colonial Papers, vol. ix., No. 33. Richard Kemp seems to have, before Hawley's arrival, performed some of the duties incident to the treasurership. When Hawley demanded the full enjoyment of all the rights of the office, Kemp began to stickle on a question of precedency, which he claimed belonged to him both as Secretary and as the most "ancient" councillor. For several days, he declined to set his name to any order which had been previously signed by Hawley. So great was his umbrage over his loss of income in consequence of Hawley's appointment, that, upon this ground alone, "a distance" was long kept between the two officers; on the initiative, however, of Kemp himself; British Colonial Papers, vol. ix., 1636-8, No. 110; also No. 36.

<sup>3</sup> *Ibid.*, 1638-9, 33, 33 I.

in each county."<sup>1</sup> After the Restoration, Henry Norwood, a faithful adherent of the royal family in the hour of danger and misfortune, received the gift of the place by the direct intervention of Charles II himself; and he seems to have held it to a date as late as 1677.<sup>2</sup> In the following year, Gawin Corbin was serving as Deputy-Treasurer, apparently under Thomas Ludwell as Treasurer.

Down to 1691, the Treasurer seems to have been appointed by the English Government, but in the course of that year, the General Assembly elected such an officer, whose duties, however, probably did not extend to any revenues, such as the quit-rents, which could be looked on as belonging exclusively to the King. The first Treasurer by the choice of that body was Colonel Edward Hill, who was instructed to take into his keeping all the funds accruing under the operation of the Act for Ports passed to ensure a more thorough collection of the customs; and also from the duty placed on imported liquors. Hill was required to give a bond with a penalty of five thousand pounds sterling; and his salary was fixed at six per cent. of his entire receipts.<sup>3</sup> Robert Carter was occupying the office at the close of the century.<sup>4</sup>

<sup>1</sup> Hening's *Statutes*, vol. i., p. 306.

<sup>2</sup> York County Records, vol. 1664-72, pp. 30, 31, Va. St. Libr.; Campbell's *History of Virginia*, p. 327.

<sup>3</sup> Hening's *Statutes*, vol. iii., p. 92.

<sup>4</sup> B. T. Va., vol. vii., p. 323; Hening's *Statutes*, vol. iii., p. 197. Carter seems to have been appointed in 1699 to receive the revenues accruing from the temporary tax on newly imported servants and slaves, and also from that on imported liquors. In his testimony before the English Commissioners in 1697, Henry Hartwell said: "The House of Burgesses have pretended to a right of naming a Treasurer of their own, which very lately denied them makes them suspicious and more unwilling to raise money"; B. T. Va., 1697, vol. vi., p. 145.

## CHAPTER XLIII

### Conclusion

**I**N considering retrospectively the different conditions prevailing in Virginia during the Seventeenth century, the historian is deeply impressed with its close resemblance in all the varied aspects of its life, save the agricultural alone, to the Mother Country. The Colony had been settled, not, like New England, by the representatives of a single section of the English people, namely, those in sympathy with a special phase of religious belief, and its austere social influences, but by representatives of the English people at large, who were profoundly devoted to the monarchical principle, to the doctrines of the Anglican Church, and to the liberal and generous social traditions of their race. The conditions observed in Virginia were, as a consequence, much nearer to those which, in these early times, gave a distinctive character to an English community; it was much more a segment of the Mother Country, because more reflective of the typical diversities of life and thought prevailing there,—indeed, it can be justly said that Virginia, in the Seventeenth century, resembled England as closely as it was possible for a sparsely settled colony of small wealth, situated in a remote quarter of the globe, to do. All the divergencies, like the system of agriculture, for



instance, had been practically dictated by certain conditions existing in a land recently rescued from the forest and the savage,—conditions not to be overlooked in carrying out a general policy of adopting English methods, customs, and laws.

Perhaps, the most striking points of resemblance were to be discovered in the respective social habits and leanings of the two peoples. There are several reasons which account for this fact.

First, the direct English descent of the Virginians of that age. The great bulk of the inhabitants of the Colony of all ranks were sprung from the English stock. The Scotch and Irish elements at this early period were entirely lost in the mass of population; and whilst the Dutch and French were of somewhat greater consequence, nevertheless persons of those nationalities were not sufficiently numerous to make any permanent impression on the social tendencies of the communities in which they resided. Indeed, throughout the greater part of the Seventeenth century, the principal citizens of Dutch and French origin had intermarried with Englishwomen, and their children did not differ in any respect from the children of planters of the purest English blood. The foreign infusion was practically obliterated by the second generation. The whole population, therefore, was always essentially and typically Anglo-Saxon; and that being the case, it is only natural that the entire community should have been controlled by those ideas, traditions, and customs which had long characterized the social life of the vast majority of the English people at home.

The fact that the Virginians clung with such tenacity to every tie binding them to the Mother Country

sprang, in no small measure, from the completeness with which they had inherited all its social peculiarities, from the division into social ranks to the popular indoor and outdoor pastimes. No order of nobility of course prevailed in the Colony, but the line separating the gentleman from the yeoman, and the yeoman from the agricultural servant, was as sharply drawn as in England. All the ceremonial terms indicating social distinctions, all the badges and insignia marking pride of blood, were in as constant use in Virginia as in England itself. Custom gave as authoritative sanction to gradations of social rank in the Colony as the law gave in the Mother Country. The social gulf lying between powerful and wealthy citizens like the elder William Byrd, Richard Lee, or Nicholas Spencer, and the obscure proprietor owning an adjacent estate of a few hundred acres, was as great as that dividing the English nobleman from a neighbor who occupied the same situation in life as the Virginian yeoman. The exigencies of a new country were undoubtedly productive of a closer personal sympathy between the different classes in the Colony than was to be observed between the different classes in England in that age, but this sympathy did not serve, to an appreciable degree, to break down the fundamental barriers dividing the different social orders.

From the beginning, Virginia was a highly organized social community. There was at no period in its history during the Seventeenth century any of that social equality which, in more recent times, has distinguished the life of American frontier settlements. The aristocratic framework of its society was coeval with the foundation of Jamestown. As the century drew on to a close, that framework was seen to have

been strengthened rather than weakened by the Colony's growth in wealth and population. One of the most conspicuous proofs of this fact is to be found in the change in the basis of suffrage; in the earlier years, every freeman enjoyed the right to vote, but after the Restoration, when the influence of the upper class had become all-powerful, the franchise was confined to freeholders and householders; and near the end of the century, it was restricted to freeholders alone. There are other indications equally unmistakable that time only gave additional vigor to the aristocratic spirit already pervading the social life of the community.

The loyalty of the people of the Colony to the social characteristics of the Mother Country was shown, to the same remarkable degree, in all their social customs and diversions. It was observed in the celebrations of funerals and weddings; and also in those varied scenes accompanying the other large popular gatherings, whether held on the muster field, on the court-house green, or at the church door. It was observed in their love of those indoor amusements which had long entertained the English in their hours of leisure, such as card-playing, dice-throwing, betting, acting, ten-pins, and dancing. It was observed in their love of those numerous pastimes in which the horse played a leading part; especially in their love of trials of speed, upon a public or private race course, participated in by many trained steeds. It was observed in their love of such sports in the open air as following the hare and raccoon with dogs, hunting the partridge, turkey, pigeon, and wild water-fowl with guns, catching fish with hook and line, or striking them with spears. Indeed, the people of Virginia were even more



ardent and constant in the pursuit of all these amusements than the English because more dependent upon them for diversion. And for the same reason, they carried their observance of the laws of hospitality even further; which led them to welcome to their homes kinsman, friend, or stranger with more warmth and unreserve than was usually displayed in the Mother Country.

The second great influence at work to promote the Colony's social resemblance to the Mother Country sprang from the fact that, with barely an exception, the foremost citizens throughout the Seventeenth century had not only been born in England, but had been reared and educated there; when they left the Mother Country in order to make a permanent home oversea, their characters had been formed, and their opinions fixed, by the general tone of the communities in which their previous life had been passed. They were Englishmen, not only by descent and nativity, but also by all those subtle influences of personal association and personal observation brought to bear upon their dispositions in their childhood, youth, and early manhood. It was under an English roof that their first lesson in social laws had been inculcated; it was in intercourse with English companions that their first knowledge of social amusements had been obtained; it was at an English school that they had acquired their first learning in letters; it was by an English clergyman that they had been first grounded in religious doctrine. In short, every impression which they had received at this susceptible age was purely English. Their views as to religious faith, as to forms of government, as to the social order, as to rights of private property,—all had been shaped by

the particular English ideas they had inherited or imbibed. The energy, firmness, and enterprise reflected in their willingness to emigrate indicated that they were animated to an extraordinary degree by the spirit of the very greatest of the English personal qualities; and it was this very fact that chiefly accounts for the social and political influence which so many of these transplanted Englishmen possessed after their removal to the Colony. Samuel Mathews, Richard Lee, the elder Nathaniel Bacon, Thomas Ludwell, the elder William Byrd, Robert Beverley, William Fitzhugh, and a hundred others of equal prominence at one time or another during the course of the Seventeenth century, were natives of England, were reared in English homes, were educated in English schools, and had mingled until their majority in English social life. It was these men who shaped the history of Virginia during this long period, whether we regard that history from a social, political, or economic point of view; and it was only natural that the personal influence exercised by them precisely resembled in character the personal influence exercised by their contemporaries in England who stood in the same social rank, owned the same amount of property, and were distinguished by the same moral and intellectual qualities. The large land-owner of gentle descent and powerful family connections residing in one of the English shires did not occupy a more commanding position in his own community than William Fitzhugh did in the upper part of the Northern Neck, William Byrd in the upper valley of the James, Robert Beverley in Middlesex, or Adam Thoroughgood in Lower Norfolk. And this great personal weight was derived in every instance from exactly the same causes, namely,

the possession of unusual mental and moral force, the enjoyment of large estates, and perfect sympathy in religious, political, and social opinion with the mass of the people amongst whom they lived.

The points of view of the general population were already distinctly English, but the whole influence of these prominent men, as exerted by example, was directed towards making these points of view more English still, and this they did by their observance of all the English rules in the management of their domestic affairs; by their loyalty to those social customs they had first come to know in English homes; by their reverence for those social ideals they had drunk in with their mothers' milk; by their devotion to the form of government under which they were born, and their respect for every branch of official authority; by their reverence for the Church of England, whose doctrines had been instilled into their minds in their childhood; and by a personal demeanor marked by all that stateliness and dignity springing from the consciousness of gentle descent and superior talents, from long intercourse with refined society, from the enjoyment of fortune, and from the possession of the best literary culture afforded by the age. How fructifying were the social influences pervading the Virginian homes of these conspicuous transplanted Englishmen is revealed in the extraordinary personal attractiveness of many of their sons. Such men as the younger Daniel Parke, and the younger William Byrd, as we know, won a high consideration in some of the most critical drawing-rooms of the Old World, and showed themselves fully equal to all the exacting requirements set by the social standards of its most polished and accomplished circles.



A third influence promoting the Colony's social resemblance to the Mother Country was the existence in Virginia also of a system of extensive landed estates. The large plantation had its origin, as has been pointed out elsewhere, primarily in the peculiar requirements of tobacco culture. Tobacco was a plant that demanded the richest soil for its production in perfection. There were no artificial manures in that age which could be used for the restoration of the fertility of old fields worn out by exhaustive methods of tillage; and the only means of overcoming this condition was to create new fields by removing the heavy forest growth, whether primeval or secondary. In order to secure such new fields, it was necessary that the area of each plantation should reach over a very considerable surface of ground; and the greater the plantation, the more certain it was that there would always be virgin lands within its boundaries to open up. There was no disposition on the part of the authorities to check this economic tendency, not only because its practical necessity was recognized, but also because one of its chief results was to press back the line of frontier, since the search for a fresh and rich soil, not always to be supplied by an old plantation, was constantly inducing the settlers to spread out further and further. As the line of frontier was moved outward, the danger of Indians making incursions into the heart of the Colony permanently vanished, and thus the Colony was in a position to preserve and increase the strength and wealth of its central parts without interference.

But the tendency toward the large plantation did not arise altogether from the needs of tobacco culture. It was partly due to a characteristic of the land-owners

derived from their English fathers, namely, a desire for privacy in their domestic life. A love of isolation in the situation of his home has long been a conspicuous trait of the rural Englishman of fortune; and it is as noticeable in him to-day as it was three hundred years ago. If compelled to erect his residence near a public highway, owing to the small size of his estate, he will shut out public observation by building a high wall, or planting a thick hedge around his grounds. If, however, his lands spread over much space, his disposition is to erect his dwelling house where it will be screened entirely from view by groups of trees, or by the intervening distance. This was the feeling of the Englishmen of means who settled in Virginia. One of the greatest advantages, in their opinion, attending the acquisition of an extensive tract there was that it permitted the choice of a site for a home where the proprietor could live in complete retirement, except so far as it might be broken by the welcome presence of kinsmen, friends, and invited strangers. The secluded existence of the plantation had a tendency to confirm the disposition of the transplanted Englishman to reside out of sight of the public road, a disposition he had inherited from his ancestors. The larger the estate, the more certainly was this disposition gratified. Moreover, in Virginia as in England the social importance of the land-owner was very much dependent upon the extent of his holdings; and the influence of this fact also stole in to promote his desire to secure possession of as large an estate as it was possible for him to do.

The immediate effect of the system of large plantations was to foster and strengthen in these transplanted Englishmen all those traits which had been a part of

their moral and intellectual growth before they emigrated to Virginia. The remoteness and the seclusion of the plantation life created no influence to modify these traits; on the contrary, that life would seem to have offered more unobstructed room for the display of these traits than did England itself, for, being more retired and more independent, it must have been less conventional and less artificial in its general character. The land-owner was left to act wholly in accord with the ideas and habits he had brought with him to the Colony,—indeed, there was nothing whatever to interfere with his continuing to govern his life by the general principles of thought and conduct in which he had been reared. All the tendencies of the prevailing system really accentuated the leanings derived from his early environment and education. His jealousy of his personal liberty of action was only increased; his love of political freedom was only enhanced; his devotion to his home and family was only intensified; his hospitable disposition was only promoted; and his religious sense was only made the deeper. In brief, his loyalty to all the English ideals in every department of life only grew the more ardent and the more unreserved.

A fourth influence promoting the Colony's social resemblance to the Mother Country arose from the presence of the indentured servant and the slave. During the existence of the term for which he was bound out, the servant, whether domestic or agricultural, was as completely in the power and under the control of the master as if he were in the same state of bondage as the negro. He could be sold or disposed of by will with equal conformity to the law; the only difference was that he could be held only during the continuation



of his term, whilst the slave remained the property of his owner during life. The fact that the negro had no ground for expecting the termination of his bondage, and the fact also that he was by nature more docile and submissive, made him more subservient to his master, and his master in turn more kind and affectionate to him. The slave stopped permanently on the plantation; the indentured servant, on the other hand, departed at the end of his term, and was quite probably seen no more by his former employer. The slave generally died on the plantation on which he was born. That was his home; and there he looked forward to being buried. His interest in his master's family was naturally keener than that felt by an indentured servant; his identification with that family far closer, and his pride in all that concerned its members far more lively. This greater personal devotion, this more cheerful and more complete self-obliteration, brought about by the difference in his situation, made the influence springing from slavery more feudal and more baronial than the influence springing from indentured service; but indentured service, on the other hand, by subordinating one set of white people absolutely to another set, accentuated even more than slavery did the differences of social degree among the whites themselves. The great body of white servants formed a separate class of itself, the lowest in the social scale among the white population. It was a class as clearly recognized by law in Virginia as the class of noblemen, at the other end of the scale, was in England. The fact that the chance of becoming a prosperous land-owner himself after his term had ended was open to every indentured servant made no difference in his standing as long as he was actually under articles.

The class always remained, however constantly the individuals composing it were changing; and its existence raised and confirmed the social position held by the highest circle of planters.

It was not simply by the creation of a practically enslaved class among the great body of whites themselves that indentured service promoted an aristocratic spirit in the social life of the Colony. The white persons bound out under articles required even more skill for their management and control than the negroes; they were more difficult to govern and direct to advantage; and, therefore, their supervision constituted a finer school than the supervision of slaves for the cultivation of the power to command men, and of the ability to obtain from them the largest amount of labor within a given time.

It was not until towards the end of the century that the number of the negro bondsmen approximated the number of white servants. In 1649, there were only three hundred blacks included in the population, but in 1700 there were many thousand. It was the indentured servant and not the slave who played the chief industrial part throughout the greater portion of this century; and, therefore, the influence exercised by the former upon the social institutions of the Colony during this long period, was far greater than that exercised by the latter. But it shows how similar the social and economic influence of indentured service and slavery respectively was, that, when slavery began in the system of colonial life to overbalance indentured service, not only was no divergence in the spirit of that system observed, but this spirit was only the more strongly confirmed in the direction which it had already taken.

Virginia's resemblance to the Mother Country during the Seventeenth century was, from a religious and moral point of view, as remarkable as it was from a purely social. The population of the Colony, as already pointed out, was not drawn from any one section of the English communities which had grown out of sympathy with the disposition of a majority of their compatriots. In their social customs and habits, as we have seen, the Virginians were in touch with the great bulk of the English people; and so were they in the moral standards which they applied to personal conduct. They combined the power to enjoy all the pleasures and amusements of life with an unaffected reverence for religion, and a genuine respect for morality. In Virginia as in England, among the men who played the various games of chance so popular in that age,—who attended and bet on the public races,—who flirted with the prettiest women at the musters,—who danced untiringly at balls in the plantation homes,—and who feasted and drank mutual healths on social occasions in private houses with all the zest of their mediæval forefathers,—were the very ones who, from the county benches, enforced, with most strictness, the rigid laws adopted for the observance of the Sabbath, and the suppression of the vices of profanity, drunkenness, bastardy, and the like. It was they who set the example in being present at religious services with regularity, and were most resolute in requiring that this example should be followed. It was they who saw that the helpless poor obtained relief from the parish; and it was they who also most frequently remembered the indigent in their last wills. In their daily lives, they acted upon the principle inculcated by all the influences of the Anglican Church



to which they belonged, namely, that there was no inconsistency between religion and morality and a reasonable indulgence in pleasure and amusement; and if they sometimes erred on the side of excess, it was to be set down to human infirmity (which they were the first to condemn), and not to deliberate bestiality.

There are numerous indications that the moral tone of Virginia in these early times was in some respects higher than that of the Mother Country. There was apparently among the Colonists none of that love of cruel sports long distinguishing the English people. The confinement of extreme poverty to a very few persons, and the entire absence of town life, prevented the creation in Virginia of a degraded class resembling the one observed in England, whose members had reached a condition of great brutality in their general character. The class of which the like might have been expected in the Colony was in a state of indentured service, and, therefore, subject to strict and continuous supervision. And when the members of this class became free, they did not congregate, as in England, and grow more vicious still, but instead either scattered over the face of the sparsely settled country in search of employment, or acquired an interest in a small newly patented estate situated on the frontier. Their wide dispersion, in consequence, made it easier for the magistrates, vestries, and clergymen to protect the moral interests of the Colony from their possible bad influence.

The whole religious establishment was modelled on that of the Mother Country. There was the division into parishes, and the government by vestries. The clergymen were supported by tithes regularly levied,

and were required to conform strictly to the canons and doctrines of the Church of England. Schism and dissent found no favor among any great number of the members of the educated and ruling classes. In one particular alone was there any divergence from the English ecclesiastical system:—many of the ministers held their livings at the pleasure of their vestries, instead of enjoying, as in the Mother Country, a freehold. But this difference had its origin in practical considerations. In Virginia, all the benefices were filled by the vestries, and, not as in England, by patrons, either personal or scholastic, who dictated the nominations and could enforce their confirmation. The vestries very properly were disposed to hire by the year, and not to induct permanently, because the ministers, being imported from England, were not, before they presented themselves as candidates, known in Virginia, either personally, or by general reputation. Prudence suggested a trial until their merits should be fully tested; and experience also proved that a clergyman dependent upon the good-will of his congregation was apt to be more assiduous and faithful than one who was not.

However ardently the people of Virginia in the Seventeenth century might have wished to introduce into the Colony the general system of education prevailing in the Mother Country, there were numerous obstacles in the way of the complete realization of their desire. The first of these was purely physical; but it was for that very reason all the more powerful in its influence. One of the principal consequences, as we have seen, of the large plantation system was the dispersion of the inhabitants over an extent of surface far out of proportion to their number. There were no centres

of population, as in New England, where the tendency of the people, from the beginning, was to congregate in towns and villages, thus making it practicable to establish schools in reach of every child. In Virginia, on the other hand, the population residing not far away from each schoolhouse was generally small; and the majority of the scholars were only able to attend by walking or riding a great distance, and by defying the vicissitudes of all sorts of weather. Nevertheless, in spite of these drawbacks, there are indications that every neighborhood in the older divisions of the Colony was in the possession of one private school at least. Sometimes, as we have seen, the schoolhouse was situated in an old field at some central point where it could be most easily reached by all the pupils of the surrounding country; sometimes, in a private residence, where the teacher was employed to instruct, not only the children of the owner, but also the children of the nearest planters. This teacher was just as frequently the clergyman of the parish (a man who had enjoyed the best education the age could offer), as a pedagogue obtaining a subsistence by giving up his whole life to this one occupation. In many families, there were tutors, whose entire attention was confined to the children of these families, and who were able to impart as thorough instruction as could, in those times, be secured outside of the walls of the English colleges. Not a few of the young Virginians were sent to England to acquire their education.

As has been pointed out already, nearly all the leading Virginians of the Seventeenth century had been born and educated in England, and it was only natural that, after settling in the Colony, they should have retained their appreciation of all these early advantages



of instruction, and that they should have made a determined attempt to afford their children every facility of the same kind which could be created in that remote part of the world. It is not improbable that the very absence of a great circle of free grammar schools resembling those they had been accustomed to in the Mother Country, led them to be the more solicitous to encourage in their new community the establishment of private schools. But this attitude on their part did not prevent the exhibition, from an early date, of a desire on the part of both wealthy individuals and public bodies to set up in Virginia institutions modelled on the English free foundations. Benjamin Symmes offered an example to his fellow-planters which was soon followed by Thomas Eaton and others of equal benevolence and public spirit. In 1660, as we have seen, the General Assembly took steps to erect a College that would afford to all an opportunity for acquiring an advanced education; and before the century had ended, the corner stone of William and Mary had been laid.

In proportion to the number of persons who, in the Seventeenth century, constituted the higher planting class of Virginia, the collections of books existing in the Colony were apparently neither smaller in size, nor less choice in contents, than those found in the rural homes of England during the same period. We have seen that these collections not only, in many instances, embraced several hundred volumes, but also covered a great variety of subjects; and not infrequently included the principal Latin classics. In many ways, a life like that of the plantation, so remote from the English centres of culture and learning, was discouraging to literary tastes and interests; but in some

ways, it was promotive of such interests and tastes; for the comparative paucity of amusements must have led many persons to turn to the books they possessed for pastime in an hour of leisure; and by constant re-reading, they must have become more familiar with the spirit of these books than if they had had a large number of new ones to peruse. The younger Beverley and the younger Byrd were both born, and both received their first education, in Virginia before the end of the century, and both show in their writings that capacity for composition which comes, not so much from the intuition of genius, as from the study of the best English literary models.

It was not to be expected that the complicated and diversified system of courts prevailing in England would be established in a Colony so sparse in population and so limited in wealth as Virginia was in the Seventeenth century. There would have been no reason for the erection of such a variety of courts even if the funds for their pecuniary support had been ample, since the volume of business which each would have been called upon to transact would necessarily have been extremely small. Two courts—the County and the General—were, until nearly the end of the century, sufficient to settle all the causes coming up in Virginia in these early times. To them was entrusted the jurisdiction of every one of the English courts of law; in performing their different duties, the judges of these two courts took into view that entire field which, in England, was divided between the King's Bench, the Common Pleas, the Exchequer, Chancery, Ecclesiastical, and Admiralty Courts. Each of the Virginian courts was all these courts combined. The great difference between the two Virginian courts was

that one possessed an original jurisdiction, the other both an original and an appellate. There was no side to their general character which was brought about by the requirements of a new country except that they were especially adapted to the settlement of legal business in the most direct manner; and above all, in the most economical. In one way alone did their operation diverge from that of the English courts, namely, in the use of a less formal and a less rigid system of procedure. This was the result of two causes:—first, the judges of Virginia were, as a rule, men who had not, before ascending the bench, enjoyed any legal training, and consequently they were indisposed to encourage a system of pleadings only tending to confuse them on account of their ignorance of all legal forms except those of the simplest nature; secondly, in a new country, where there were practically no facilities for acquiring a thorough legal education, the attorneys were not inclined to insist upon the necessity of formal pleadings because it would have required more learning to practise law.

One of the most characteristic features of these early times was the strictness with which the various legal regulations were enforced. Not even in the Mother Country itself did the Law pursue a more fixed and orderly course. This was but one of the numerous aspects of life in Virginia during this century which reveal how fully the sober and conservative spirit of the English people prevailed in the Colony. From the establishment of the monthly court, during the existence of the Company, down to the end of the century, the regular system of legal administration was sustained by the whole force of public opinion. There was no need for the display of that wild spirit



of justice, which, in our age, leads the citizens of so many American communities to take the law into their own hands, and inflict a rude and summary punishment for serious offences. There was no occasion for the organization of vigilance committees, although revolting acts of criminality were not unknown; the machinery of each court performed its work smoothly and promptly; and its supremacy as the guardian of life and property, and corrector of wrongs, remained unquestioned.

It was as easy to introduce into Virginia, in the very beginning, the general system of English jurisprudence as it was the general system of the English Church. It was declared in the very first Charter that English law should be in force in the Colony; and that this law was not to be modified except in those special cases in which the circumstances of a new country required the adoption of a different rule. Two great features alone of the English law were radically changed when the body of that law was put in operation in Virginia. First, the penalty for many offences which, in England, were punished with death, was, in the Colony, graduated to the true character of each act. A vigorous whipping was, in many instances, substituted for hanging as more in harmony with the suggestions of humanity and common-sense. Even if the charters had not confined the punishment of death to a few heinous crimes, the influences springing from the special conditions prevailing in Virginia, in consequence of the secluded existence of the people, would inevitably have moderated there the terrible criminal code of England of that day. Not only were all the necessities of life more abundant in the Colony than in the Mother Country,—not only were all personal and

property rights less strictly asserted and enforced,—but the judges of Virginia could not, like the judges of England, compromise with their sense of humanity by sentencing to transportation convicts whom the law required to be hanged for some trivial offence which they had committed. England had the power to ship her criminals off to the Colonies, but the Colonies, on the other hand, were not in the same position to transfer their criminals from one to another.

The second great departure from the English legal system was the adoption of a regulation requiring the public recordation of deeds. In England, all instruments of conveyance and the like were preserved in muniment chests carefully stored away as private property; and in consequence their contents were never open to public inspection. The establishment of public record offices in Virginia, and the enforcement of laws making recordation obligatory to ensure the validity of deeds, was an extraordinary innovation, and, like the graduation of punishments to the real nature of offences, showed that the conservative spirit of Englishmen, in these early times, gave way to the demands of practical good sense as soon as they were withdrawn, as in Virginia, from the sphere of customs having their origin in a remote past. The men who emigrated to the Colony saw clearly enough in that different situation what were the precedents which should be discarded. During that early period, the planters' residences were often frail and temporary, and exposed to many vicissitudes from fire and Indian attack; and it was, doubtless, recognized almost from the beginning that these houses did not afford the same security for private deeds of all kinds as the substantial walls and roofs of English homes. This difference very

probably first suggested the erection of public offices, where all such papers might be recorded in order that the fact of their existence should become a matter of universal notoriety.

The military system of Virginia in the Seventeenth century, although necessarily operating within far narrower bounds than that of England during the same period, was nevertheless, from some points of view, perhaps the more highly organized of the two. The explanation of this lay in the fact that the fear of Indian incursions was never allayed for any great length of time. The people occupying the country adjacent to the frontier had special reason to feel such apprehension, for, although the tribes in their neighborhood might be friendly and tractable, yet there was always a danger that the tribes residing at a distance might, without any warning, come down on them at any hour. From the earliest years in the history of the Colony, marches against the Indian towns occurred almost annually. There was hardly a single able-bodied citizen in the Colony who had not at one time after his arrival at manhood had an experience of actual warfare under these stirring circumstances. The need of military organization was recognized all the more clearly because an Indian attack was invariably accompanied by unspeakable atrocities, which made the deepest impression upon the memory and the imagination. That organization was supported by the popular voice with extraordinary unanimity. Military service was regarded as such an imperative duty that its evasion was considered to be a crime against the safety of the community. The animosity aroused against the Quakers was largely due to their outcry against their own enrolment in the



militia; there was no sympathy whatever with the peace doctrine of the sect, because it was looked upon as jeopardizing potentially the life of every citizen by exposing every neighborhood to Indian assault with a diminished power of resistance.

In the quiet and uneventful existence led by the planters, it is quite probable that the readiness to perform military duty had its origin, in some measure, in the opportunity for change and excitement which it offered. A march against the Indians was, on the whole, the most stirring event in the life of the ordinary citizen, because, in its course, he was not only exposed to great personal danger, but also, in the dimness of the primeval forests, haunted only by savages, beasts, and birds, he saw the most romantic and impressive side of Nature. Moreover, during these expeditions, he was brought into association with the principal men residing in his part of Virginia, on a footing of military comradeship, the most intimate of all. The military life of the Colony was, from year to year, sterner and more active than that of the Mother Country, which, in general, consisted simply of militia musters and drills, although many soldiers were drawn away to take part in the campaigns on the Continent. If the civil wars in England are omitted from view, the militia of Virginia in that age were perhaps engaged in more real military operations than the English militia; and there was in their organization, therefore, a more pressing need of thoroughness and efficiency.

From one point of view at least, the persons composing the militia of the Colony were better prepared for military service than the majority of the contemporary Englishmen. Not only were the Virginians accustomed from youth to a life spent almost entirely

in the open air, which hardened them against the brunt of every kind of trying weather; not only were they, to an extraordinary degree, trained in the exercises of walking, running, and riding; but from the very first year when they were able to shoulder a gun, they had been perfecting their aim in shooting. Moreover, their only foe was the Indian, and long experience had given them a thorough knowledge of the Indian arts of warfare, and the most successful ways of combating those arts. Whilst the English system of drill was taught in Virginia, there is reason to think that a special drill, designed to meet the peculiar tactics of the savages in particular, was carefully taught in addition. The details of the system of discipline on the march were adopted substantially from the English system; and in the same way, the general methods of raising and supporting troops for a special expedition were of English origin. By an Act of Parliament passed after the Restoration, every owner in England of personalty to the amount of six thousand pounds sterling, or of land assuring an income of at least five hundred pounds sterling annually, was to provide and equip a horseman; whilst every owner of six hundred pounds sterling in the form of personalty, or of land returning fifty pounds sterling yearly, was to provide and equip one pikeman. In Virginia, on the other hand, where the volume of wealth was so much smaller, the provisions of this law were, whenever it was found necessary to send out an expedition, modified by imposing, not upon one citizen, but upon a designated group of citizens, the equipment and support of the single horseman or footman they had chosen for the duty. The plan of a certain number of contiguous counties entering into a military association for the

accomplishment of definite military purposes was introduced from England. At no time in Virginia, however, as in the Mother Country, was there a regular force resembling a standing army, although, as we have seen, the frontiers were often, for a period of several years, patrolled by small bodies of rangers, and the forts occupied by small garrisons.

The influence of the Mother Country was especially reflected in the political system of Virginia; indeed that system had been intentionally patterned as closely as possible upon the one prevailing in England. The Governor, the head of it, was the shadow of the King in every department of the Colony's public affairs; as Commander-in-chief, as the principal judge of the highest court, and as the local guardian of the church, he was in possession of some of the most important delegated powers of the throne. In affairs strictly political, he represented the monarch, not only in the right to preside on all ceremonial occasions, but also in the right to summon and dissolve the General Assembly, and to veto all legislative Acts. He was supported by a Council which bore the same relation to himself and the community at large as the English Privy Council bore to the King and the Kingdom; while the English House of Lords had a counterpart in this Council sitting in its capacity as the Upper Chamber of the General Assembly. The Secretary of the Colony, the Attorney-General, and the Treasurer, in their duties and powers, corresponded to the like officers of state in the Mother Country. The House of Burgesses, or the Assembly as it was generally known, was modelled in its procedure on the lower House of Parliament; and its only departures from that procedure were suggested by its smaller volume of



business. Its officers, its committees, the character of its Acts, were all practically the same. The basis of the suffrage, however, down to the Restoration was more democratic than that of England; except during one short interval, the right to vote was governed by manhood alone; but after the reaction following the return of the Stuarts had set in, that right was restricted to freeholders and leaseholders; and towards the end of the century was further confined to freeholders. Thus, as time went on, the basis of the suffrage came to resemble more and more closely that of the Mother Country; and in doing so to drift further and further away from the landmarks of democracy.

In the department of taxation, the people of the Colony were, from an early date, compelled to adopt an independent system of their own. During the Seventeenth century, the English Government obtained its support from a great variety of taxes, among the most important of which were the poll tax, the tax on the income from land, the hearth tax, and the like. There were too the excise and the customs. In Virginia also, there were several kinds of import and export duties, but with the exception of a short interval, when land and personal property were taxed, the poll tax and the quit-rent constituted the only forms of internal taxation in force there. Naturally, as the economic system of the Colony was far simpler than that of the Mother Country, and its accumulated wealth far smaller, there was much less room there for a variety of taxes. In spite of the poorer classes' complaint against it, and in spite of emphatic instructions from London to abolish it, the poll tax was continued as the one that, in the long run, was the easiest for the people to bear. The opposition to it gradually

died out as the volume of income from the import and export duties increased; for this steadily reduced the sum necessary to be levied by the poll.

The retention of the poll tax was justified by the conditions prevailing in Virginia. The land was already required to pay a considerable sum in the form of the quit-rent. If the surface of the Colony had been tilled as thoroughly and extensively as that of England, an additional land tax would not have been inequitable; but the greater part even of the settled divisions of the country was still in forest, and the cultivated area was entirely out of proportion to the uncultivated. In taxing the tithable, the authorities taxed what really represented the actual productiveness of the Colony as distinguished from its potential productiveness, which was without any definite limit. The productiveness of each plantation was in proportion, not to the number of its acres, but to the number of tithables engaged in working it. The poll tax enabled the Colonial Government to obtain a revenue in exact proportion to the Colony's volume of production; nor was it the less fair because, being a tax on a sliding scale, it was capable of being easily increased in order to meet the costs of an extravagant administration of public affairs, whether local or central.

From an early period, the people of Virginia through their General Assembly asserted the principle (which was to lead to such memorable consequences in the next century), that no tax could be rightly laid on them without their consent. The germ of this principle was to be discovered in the Charter of 1606, a document that conferred on the inhabitants of the Colony all the privileges and immunities enjoyed by the subjects of the King in England. So far as taxation was

imposed by the General Assembly itself, that body in adopting a measure of this kind was much more representative of the people of Virginia than the Parliament of that day was of the people of England. Whilst the great English manufacturing cities of the Eighteenth century had, in the Seventeenth, only begun to become important, nevertheless the inequalities of local representation in the House of Commons were almost as marked an hundred years earlier as it was when Chatham was largely prompted to support the American Cause by the fact that it was identical in principle with the Cause of those growing English towns which were taxed by Parliament without their having any voice in its deliberations and decisions. No such condition as this existed in Virginia; every community in the Colony was represented directly in the House of Burgesses; and, therefore, every community, through its member, participated in the passage or defeat of a tax bill. The General Assembly was, from the very beginning, an exact counterpart of what all assemblies in English-speaking countries are to-day, that is to say, bodies, which, in imposing taxes, impose them as representatives, not of general classes of interests, like the Parliament of 1764, but of local constituencies created by a uniform and general law of suffrage. It was not until 1832 that the English House of Commons became what the House of Burgesses in Virginia had been as early as 1619, a body in which the whole population was represented when a tax bill was adopted, a body in which every community carried its justly proportionate weight in the passage of such a measure. In denying the right of the English Government to impose any tax on them without their consent, the Virginians of the Seventeenth cen-



ture proclaimed a doctrine which England was, in the Nineteenth, forced to accept as the only condition of retaining her Colonial Empire.

In summarizing the particulars in which the general system of Virginia diverged from that of England in the Seventeenth century, they are found to be few in number, and not, in every instance, of great importance in their influence. They consisted, first, of the extensive, as opposed to the intensive, methods of cultivation, methods encouraged by the abundance of virgin lands, but productive of an air of neglect in sad contrast with that appearance of neatness, trimness, and thorough tillage which gave the face of the Mother Country the aspect of a beautiful garden on a great scale; secondly, of the presence of the African slave, who, whilst he fostered in the dominant class a love of liberty and an aristocratic spirit, was, nevertheless, in himself and in his permanent bondage, incongruous with the genius of English institutions; thirdly, of the practical absence of the law of primogeniture, owing to the fact that, in these early times, the younger children's only prospect of support lay in inheriting some portion of their father's landed estate, virtually the only form of property then existing in the Colony, and the only means by which a livelihood could be easily secured; fourthly, of the custom of hiring clergymen by the year, and during good behavior, instead of giving them a permanent freehold interest in their livings by the ceremony of induction; fifthly, of the smallness in the number of free grammar schools, in consequence of the comparatively limited accumulation of wealth; sixthly, of the recordation of deeds instead of the preservation of all muniments of title in private receptacles closed

to public examination; seventhly, of a less complicated system of courts and a simpler legal procedure in the course of trials; eighthly, of a system of military tactics, adapted to a running fight in thick forests, and with a furtive and treacherous enemy; ninthly, of a suffrage which at first rested upon manhood alone; tenthly, of an Assembly that represented, not only all classes, like the English Parliament, but also every individual person belonging to the several constituencies; and finally, of a legislative body, whose members, unlike those sitting at St. Stephen's, received a pecuniary remuneration for the special services they performed.

These divergencies did not seriously diminish the intensity of the English spirit animating the whole community in every branch of its interests, and every citizen on every side of his character. In her social life, in her religious doctrines, and in her political sentiment,—the points in which she might have been expected to diverge furthest,—Virginia most closely approached the system of the Mother Country; and so she continued to do until that momentous controversy arose which resulted in the destruction of the political bonds uniting her people to the British dominion. But not even the Revolution could efface on our Continent the mighty work which England had done through the growth of Virginia, and the other American communities, however far, even in Colonial times, some of the latter may, in many respects, have drifted from the distinctive landmarks of the Mother Country. Her general principles of law and government, her doctrines of the reformed religion, her standards of morality, her canons of literary taste, and her practical and conservative spirit, had been too deeply stamped upon all these communities for a political revolution

to diminish their influence, especially when this revolution was a revolt against the Mother Country's departure from the genius of her own institutions, with which she had so thoroughly imbued her transplanted children. American independence has really led to the most glorious of all England's triumphs. Had the States of the Union remained a group of English colonies they would to-day have been inhabited almost entirely by persons of English descent alone. But as a separate nationality, the United States has drawn a very large proportion of its citizens from the various countries situated on the European continent and differing very radically in the characters of their peoples. Transferred to America, these emigrants were destined to see their children grow up almost as deeply affected by the spirit of the fundamental institutions of England, as represented in the general framework of the American system, as if they were of the purest Anglo-Saxon stock; and in the third generation, the descendants of these foreigners are quite indistinguishable from persons of an unmixed English strain. Germans, Italians, Russians, Swiss, Dutchmen, Hungarians, Scandinavians,—all are subjected to the same moulding touch, with substantially in time the same result; so that England, through the work of those who planted her first permanent colony at Jamestown, has been able to shape the general sentiments of millions of human beings who, had they remained in the land of their fathers, would have rejected her national principles and ideas with a feeling of indifference, if not of positive aversion.

If to-morrow a vast wave from the Atlantic, set in motion by some appalling convulsion of nature, should sink England for ever below the level of the



ocean, and thus destroy the last remnant of her population and the last vestige of her cities and her fields, yet in her spirit, which represents all that is highest in nations as in individual men, she would still survive in that great Power oversea, whose seed she planted, whose growth she nourished, and whose chief claim to the respect of mankind will always consist in upholding those general ideas of law, government, and morality, which its people inherited from that little island lying like an emerald in the stormy seas of the North. From this point of view, the foundation of Jamestown becomes the greatest of all events in the modern history of the Anglo-Saxon race, and one of the very greatest in the history of the world. From this point of view also the conditions prevailing in colonial Virginia,—the foremost and most powerful of all the English dependencies of that day, and the one which adopted the English principles and ideas most thoroughly, and was most successful in disseminating them,—becomes of supreme interest; for from these conditions was to spring the characteristic spirit of one of the greatest of modern nationalities; and from these conditions was to arise a permanent guarantee that, whatever might be the fate of England herself, the Anglo-Saxon conception of social order, political freedom, individual liberty, and private morality, should not perish from the face of the earth.

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